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Supreme Court U.S.
FILED

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IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1998

MITCHELL SWARTZ - PETITIONER

vs.

INTERNAL REVENUE SERVICE, - RESPONDENTS
MARGARET M. RICHARDSON, COMMISSIONER (ret.),
CHARLES O. ROSSOTTI, COMMISSIONER
WILLIAM CAINE, DISTRICT DIRECTOR,
LAURA MARTIN, THOMAS LOUGHRIN,
PETER BOUSNAKIS, PETER SORENTINO,
STEPHEN DAIGE, ROBERT CHAPUT, ALL
INDIVIDUALLY AND AS OFFICERS

February 12, 1999

ON PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Dr. Mitchell Swartz
P.O. Box 81135
Wellesley Hills, MA 02481-0001
(781) 237-3625

4888

QUESTIONS PRESENTED

Should the Federal government [the Defendants, the IRS] be allowed to federalize actions already covered by state law?

Should the Defendants without either authority or jurisdiction have the power to regulate probate Court matters already decided by two states?

Can Defendants Fail to Give Credit for Timely Paid Tax Payments made which are corroborated by Defendants' Own Records, and Defendants' endorsement on Petitioner's cashed checks?

Should Defendants be allowed to ignore an inquiry by a United States Congressman, and then undertake a pattern of harassment including repeated failure to give credit for cashed checks that bear Defendants' own endorsement, and despite Defendants' own records demonstrating full, timely payments with refund owed Petitioner?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page.

Petitioner filed in the Federal District Court against Margaret Milner Richardson, Commissioner, William Caine, District Director, Laura Martin, Thomas Loughrin, Peter Bousnakis, Peter Sorentino, Stephen Daige, and Robert Chaput, individually and through the IRS.

Petitioner adjoined Defendant Charles O. Rossoti in the Appeal Court by Notice pursuant to Rule 42(c).

Therefore, the list of all parties in the proceedings in the Court is as follows:

Charles O. Rossotti, Commissioner
Margaret Milner Richardson, Commissioner (previous),
William Caine, District Director,
Laura Martin,
Thomas Loughrin,
Peter Bousnakis,
Peter Sorentino,
Stephen Daige, and
Robert Chaput, Individually And As Officers.

TABLE OF CONTENTS

ON PETITION FOR A WRIT OF CERTIORARI	Page 1
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
BASIS OF FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE	4
CONCISE STATEMENT OF MATERIAL FACTS	5
REASONS FOR GRANTING THE WRIT	21
CONCLUSION	30
APPENDIX A - Opinion of the United States court of appeals.	31
APPENDIX B - Order denying rehearing.	33
APPENDIX C - Petitioner's checks cashed checks, each bearing Defendants' endorsement showing timely overpayment and deposit into Defendants' banks.	34
APPENDIX D - Defendant's own records demonstrating that the Petitioner was owed tax refunds, because of timely overpayment filed with appropriate administrative forms.	35
APPENDIX E - Unrebutted Declaration of Accountant demonstrating a pattern of failure by Defendants of failing to give credit for cashed checks and wages withheld despite both timely payments and appropriate administrative forms.	36
APPENDIX F - Default of one of the Defendants.	38
APPENDIX G - Evidence in record demonstrating that fraud was used to lift the Default. All defendants were served as the Courts' clerks specified.	39
APPENDIX H - Court Order violated by Judgment (California)	40
APPENDIX I - Court Order violated by Judgment (Massachusetts)	41
APPENDIX J - Court Order violated by Judgment (Massachusetts)	42
APPENDIX K - Result of Petitioner's Study of the US citizen satisfaction with the judiciary by state	46

Table Of Authorities Cited

CASES CITED	
Alexander v. "Americans United," Inc., 416 U.S. 752 (1974)	16
Bloom v. Illinois, 88 Ct. 499 S.Ct. 1477	5
Bob Jones Univ. v. Simon, 416 U.S. 725, 736 (1974) (quoting Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962)).	16
Bulbo v. United States, 633 F.2d 1137, 1139 (Sth Cir. 1981)	15
Chelebda v. H.E. Fortuna & Brothers Inch 609 F.2d 1022 (1st Cir. 1979)].	13, 18
Commissioner v. Shapiro, 424 U.S. 614, 628 n.10 (1976)	17
Conforte v. United States, 979 F.2d 1375, 1377 (9th Cir. 1992)	5
Coon v. Grenier, 867 F.2d 73 (1st Cir. 1989)	24
Denman v. Shubow, 413 F. 2d 258.	5
Dixon v. U.S., No. C-3-94-448, 3122196	5
Droukas v. Divers Training Academy, 375 Mass. 149, 159 (1978)	18
Duncan v. Louisiana, 88 S.Ct.1444	5
Enochs v. Williams Packing & Navigation Co., 370 U.S. 1 (1962); NO. 493. 291 F.2D 402	15-17
Freeman v. Bee Machine Co., 319 U.S. 448 (1943)]	5
Frontiero v. Richardson, 93 S.Ct. 1736, 411 U.S. 677	5
Gamez v. Toledo, 100 S. Ct. 1920	4
Gass v. Lopez, 95 S. Ct 729	5
Griffin v. Breckenridge, 91 S Ct 179D	5
Griswold, v. USA	26
Howard v. Kunen, USDC Mass. CA 73-3813-G, Dec. 3, 1973	5
In re Carlson, 580 F.2d 1365, 1369 (10th Cir. 1978); see also Bob Jones University v. Simon, 416 U.S. 725, 736 (1974)	15
Information Resources, Inc. v. United States, 950 F.2d 1122, 1127-28 & n. 4 (5th Cir. 1992)]	5

Lancey v. United States, 356 F. 2d 407 (9th Cir. 1966)	28
Lewis v. Bours, 119 Wn.2d 667, 670 (1992))	11,12
Marino v. Hyatt Corporation, 793 F.2d 427, 430 (1st Cir. 1986)]	13,18
Mayberry v. Penna., 91 S.8	5
Megarry v. Norton, 137 Cal. App. 2d 581 (1955)	11
Miklautsch v. Comm, No. A89-291 Civil, 11/6/90	29
Morrill v. Tong, 390 Mass. 1207 129 (1983)	13,18
Moss v. Morgan Stanley, Inc., C.A. N.Y., 719 F.2d 5, 17	26
Mullins v. Brando, 13 Cal. App. 3d 409 (1970)	11
Niehot'f v. Sahagian, 103 A.2d 211 (Me. 1954)	25
Osborn v. Bank of United States, 22 U.S. (9 Wheat) 738 (1824))	4,13
People v. Pierce, 66 Cal. 2d 53 (1967)	24
People v. Jaso, 4 Cal. App. 3d 767 (1970)	19
Rannard v. Lockheed Aircraft Corp., 26 Cal. 2d 149 (1945)	23
Snaidach v. Family S.Ct. 1498	5
U. S. v. Price, 86 S. Ct. 1152, 1157, footnote 7	5,25
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT; No. 93-7007 LUCY FRECK, a.k.a. Lucy Cameron v. INTERNAL REVENUE SERVICE, Defendant, in an Appeal from the United States District Court for the Middle District of Pennsylvania (D.C. Civil Action No. 90-02141)]	28
UNITED STATES COURT OF APPEALS FOR THE SECOND Circuit; Docket No.94-6220; Jack Randell V. United States Of America	5
United States v. Pepperman, 976 F.2d 123, 127 (3d Cir. 1992)	29
Nixon versus United States	6,24
Weiss v. Weiss, 436 N.Y.S. 2d. 862, 52 N.Y. 2d. 170 (1981)	4
Wood v. Strickland, 95 S Ct 9S2	5
Yorty v. Chandler, 13 Cal. App. 3d 467 (1970)	11

IN THE
SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1998

ON PETITION
FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States court of appeals which appears at Appendix A in the present petition.

OPINIONS BELOW

The opinion of the United States court of appeals [case No. 98-1058] appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of appeals decided Petitioner's case was September 22, 1998.

A timely petition for rehearing was submitted and was thereafter denied by the United States Court of appeals on November 20, 1998. A copy of the order denying rehearing appears at Appendix B.

Petitioner thereafter has asked the United States Court of appeals to resolve some of the issues by Motions in order to both preserve judicial economy and integrity and to simplify the issues in the present Petition for Writ. A copy of the Motions appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and the United States Constitution (Article III, Article IV, and the Fourth, Fifth, Sixth, Thirteenth and Fourteenth Amendments).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supreme Court is the Petitioner's last and only source of relief. The court of appeals has decided an important federal question that conflicts with several relevant decisions of the US Supreme Court and other courts of appeal. Furthermore, the decision on some points has so far departed from accepted and usual course of judicial proceedings, including departure from three Court orders from two states that the US Supreme Court should exercise its supervisory power. The Petition involves abuse of discretion, failure to comply with the law, as well as the need to resolve legal issues including the interpretation of Federal Tax Statutes when the Federal Government broaches upon State-determined issues previously and presumably protected by both State Court orders and signed Agreements.

In addition to statutes cited in Section 1(g)ii, the constitutional provisions involved include Article III, Section 1; Article III, Section 2; Article IV, Sections 1, 2 and 4; and Amendments IV, V, and XIV.

BASIS OF FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

The original Complaint of the above-entitled action involved several causes of action against the Internal Revenue Service (IRS) and several IRS officials, hereinafter referred to as Defendants, including failure to give credit for cashed checks bearing the Defendants' endorsement [Appendix C], even when confirmed by Defendants own records [Appendix D], failure to give refunds from overpayments made in a timely basis with full administrative forms as confirmed by unrebutted Declaration [Appendix E], civil rights violations, and abrogation of three (3) state probate Court agreements [Appendices H, I, and J].

Federal question jurisdiction is authorized by Article III of the Constitution because Defendants have acted under color of federal law [Osborn v. Bank of United States, 22 U.S. (9 Wheat) 738 (1824)]. Here there is more than the mere possibility that a question of federal law arises sufficient to satisfy the "arising under" jurisdictional authorization of Article III [cf. 28 U.S.C. §1331].

Petitioner (previously Plaintiff, then Appellant) provided the US District Court with several bases for jurisdiction, including Federal question jurisdiction and original jurisdiction because of, but not limited to, repeated violations of mail fraud [section §1339]; fraud in the IRS (section §1340]; 18 U.S.C. Sec. 1001 (making false statements or writings); 18 U.S.C. Sec. 641 (knowingly stealing); and 18 U.S.C. Sec. 371 (conspiracy to defraud).

Pursuant Gamez v. Toledo, 100 S. Ct. 1920, Petitioner asserted that was a federal civil rights suit under Title 42, U. S. Code, Sec. 1983. Defendants have violated Plaintiffs rights to the 14th Amendment's "equal protection" clause [US. Code Annotated, Frontiero v. Richardson, 93 S.Ct. 1736, 411 U.S. 677; Weiss v. Weiss, 436 N.Y.S. 2d. 862, 52 N.Y. 2d. 170 (1981)]. Other U.S.

Civil Statutes cited were Section 1981 of Title 42 (Equal Rights Under the Law) {See 42 U.S.C. § 1981; 42 U.S.C. § 1983), and conspiracy against the civil rights of a US Citizen (18 U.S.C. §241).

Defendant was denied due process of law [Gass v. Lopez, 95 S. Ct 729; Wood v. Strickland, 95 S Ct 9S2: U.S. v. Price, 86 S Ct 1152, 1157, Footnote 7; Griffin v. Breckenridge, 91 S Ct 179D; Denman v. Shubow, 413 F. 2d 258. Defendants actions have been inconsistent with Plaintiffs right to an impartial tribunal (See 28 U.S. Code Section 144, Mayberry v. Penna., 91 S.8.; Bloom v. Illinois, 88 Ct. 499 S.Ct. 1477; Duncan v. Louisiana, 88 S.Ct.1444), including the right to an opportunity to be heard before losing any liberty or property rights under color of law [Snaidach v. Family S.Ct. 1498. Confer also Howard v. Kunen, USDC Mass. CA 73-3813-G, Dec. 3, 1973].

Defendants usurpation of two states Court orders could also be construed as a Federal antitrust case, which is also within the exclusive jurisdiction of the federal courts [Freeman v. Bee Machine Co., 319 U.S. 448 (1943)]

Plaintiff clearly exhausted his administrative remedies before filing a civil action under Section 7433 [Conforte v. United States, 979 F.2d 1375, 1377 (9th Cir. 1992); Information Resources, Inc. v. United States, 950 F.2d 1122, 1127-28 & n. 4 (5th Cir. 1992)]. The law states that the Federal District Court must receive any taxpayer's request for refund where taxpayer did pay all of tax allegedly owed -- as did occur here (*vide infra*, Appendices C, D, E; Dixon v. U.S., No. C-3-94-448; [UNITED STATES COURT OF APPEALS FOR THE SECOND Circuit; Docket No. 94-6220; Jack Randell V. United States Of America]

A Trial by jury was requested because Petitioner has been denied his Sixth Amendment right to confront opposing witnesses and the right to compulsory process for obtaining favorable witnesses including the right to an opportunity to be heard before losing any liberty or property rights.

CONCISE STATEMENT OF THE MATERIAL FACTS

1. Petitioner is a Massachusetts resident, a former journalist (1), physician and scientist who for decades has always overpaid taxes to the Defendants.

2. Petitioner paid all taxes in 1989, 1990, 1991, and 1992 in a timely fashion supplementing wage-withheld taxes. Petitioner overpaid Defendants his tax liabilities on time, in good faith, and submitted the appropriate administrative forms. Petitioner did not owe any liability, penalties, or interest (2). The amount of said checks paid to, and cashed by, Defendants and wages withheld EXCEEDED the amount of taxes owed. Petitioner owed no money (Appendices C, D, E, and in the appeal record as Exhibits 1,2,4,5,7-13) including and especially those exhibits from the archives of the Defendants (Appendix D, Exhibits 7, 8).

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(0) Appendices A through G are attached to the present Petition. All other Exhibits. Addenda. and Appendices refer to the Exhibits already in the record associated with the Appeal Brief.

(1) In the period 1972-74 Petitioner was a part-time print journalist covering certain news events and issues in Boston. Washington. DC (including at the White House and from the steps of the Supreme Court re: Nixon versus United States: Addendum A17). Later. Petitioner was also a witness who was asked to testify about his research on judicial findings before Massachusetts congressional committees regarding newly discovered statistics reflecting multistate judicial irregularities that appeared to focus. by sheer chance. upon the Commonwealth of Massachusetts and the state of Arkansas (Appendix C or Addendum page A18). Subsequent to reporting these findings to the Department of Justice (presently defending the Defendants) and later requesting additional information. Petitioner was thereafter denied data. and beginning in 1993 Petitioner has been harassed by the IRS (*vide infra*) consistent with retaliatory tactics reported widely.

(2) These facts are confirmed by Petitioner's cashed checks which demonstrate that they were timely delivered. and then endorsed by the Defendants and deposited in Defendants' bank [Appendix C. Exhibits 7-13.57.58: Add. A1-A7. A8-A11: and App. pp. 190-203. especially Exhibits 7. 8. 9. 10. 11. 12. and 13 (confer App. 1. App. 169. pp. 12: Exhibits 7 through 13. 57. 58: Add. A1-A11). These Exhibits in the Court record (attention is directed specifically to Exhibits 7-13.57.58: Addenda A1-A7. A8-A11: and Appendix page 190-203) forever prove that Petitioner had and has no tax liability.

3. As described in Petitioner's (unanswered) Complaint, beginning on or about 1993, Petitioner sought - but was unlawfully refused - tax refunds to which he was entitled by fact and law. But Defendants ignored those requests as they ignored timely cashed checks, Defendants own records, and verified Declarations. Attention is directed to the simple fact that Defendant's own documents reflected "total (tax) payment" with a "refund due" (Exhibit 7, 8).

4. However, beginning on or about 1993, Defendants refused - without explanation, or reason, or basis - to give credit to Petitioner for his payments even though Defendants cashed the checks (Exhibits 9, 10, 11 and 12). Simply put, no credit was given for overpayment. When a Federal case was filed, Defendants sequentially failed to apply credit for cashed checks made to -- more than fully -- satisfy tax payments. When confronted with cashed checks [Appendix C], and a Congressional inquiry, Defendants then began to rescind payments retroactively to as far back as 1989 (Addendum page A1 through A7, A9-A11; Exhibits 7-13,57,58; Appendix pages 190-203).

5. Most importantly, as stated in Declaration [Appendix E]:

> **" ... the IRS has failed to credit this taxpayer for payments made. Instead, the IRS has misapplied, if not outright lost, Dr. Swartz's tax payments over several years... The Plaintiff is correct in that the copies of the canceled checks made out to the IRS that he submitted to the court, are exactly the ones - in addition to the withholdings which were also made - used to pay all of Dr. Swartz's tax assessments in full. .. In summary, it is not true that Dr. Swartz owes either statutory or any other tax assessment for said years. Dr. Swartz overpaid, and when the returns were filed Dr. Swartz was entitled to a refund. Instead, Dr. Swartz has received no credit for his previous overpayments, or his cashed checks."**
>
> [unrebutted Declaration of Petitioner's Accountant]

6. Thereafter, to further the harassment, Defendants claimed to have been purportedly "collecting" Petitioners tax refunds and other assets (such as child support and Petitioner's other bank accounts) for a private third party. These actions by Defendants have been

egregious because the money was taken without authority, against statute, against protest, without jurisdiction, and in defiance of Court orders (Appendices H through K, Exhibits 3, 5) from two (2) states {Addendum page A12-A14; Exhibits 1,2 4,5; Appendix pages 204-206). Furthermore, much of the money is missing because Defendants refused to provide full records dealing with this matter. Defendants have claimed that Petitioner signed over to them two checks, which in fact Petitioner has never even received. Given the failure by Defendants to give credit for cashed checks (*vide supra, vide infra*), this is salient abuse of an individual citizen by the most powerful government agency all under color of law.

7. Defendants' defiance and actions are in clear violation of signed Court agreements and Court stipulations. They have ignored letters from an assistant district attorney and a Congressman from Massachusetts. The actual cashed checks, the Defendant's own records [Appendix D], Petitioner's signed Court stipulation, Petitioner's Court Agreement, and Court orders of two (2) states (CA and MA), and letters from individuals mentioned above: a US Congressman, CPA, and an Assistant District Attorney stand unrebutted by Defendants, in documents not addressed by the appeals court.

8. Instead of honest accounting -- including accepting checks with their own endorsement or their own records -- Defendants have used a campaign of false statements to destroy Petitioner's integrity, image, health, family, and reputation.

9. Corroborating the above, attention is now directed to the unrebutted Declaration of the certified public accountant [Appendix E] which demonstrates not only the Defendants are wrong, but they have developed a pattern of this:

> **"If the IRS had treated Dr. Swartz in accordance with standard practice, it would be clear that they owe several thousands of dollars on this matter. Instead, there is a <u>pattern</u> by the IRS of failure to credit Dr. Swartz for his payments over several years. The result has been the misapplication of Dr. Swartz's significant payments and credits from 1989 through 1993."** [unrebutted Declaration of Petitioner's Accountant]

10. The harassment goes beyond false levies and summons for money already paid, goes beyond failure to give good faith credit for cashed checks which Defendants cashed on time, but it goes to more than five examples of harassment including Defendants having seized two (2) explicitly named child support accounts, and every bank account and interest unlawfully under color of law [supported by unrebutted verified Declarations (App. 169-175) and the unanswered Complaint]. Child support accounts are explicitly exempt from levy yet the Defendants snatched them anyway. Defendants violated Court orders from two (2) states {Add. A12-A14; Exhibits 1,2,4,5; App. 204-206). Thus, this pattern of harassment includes civil rights violations (1-4,6,14-17,19-21, 28,34,35-37,43-51,56) of which Defendants already have a pattern (Exhibits 6,19,20,27,42-48; App. 309-335) with violations of UN law (Exhibits 34 through 37), 18 U.S.C. §242 (Exhibits 1,2,5,6,41,42) and 18 U.S.C. §241.

11. The Petitioner is entitled to relief. Threatened actions for (re)collections of purported "taxes", which have actually already been paid is egregious. The violations of law by the Defendants cited in the original Complaint of the above-entitled action have been confirmed by Congress and by the General Accounting Office. Both GAO and Congress have noted Defendants have flaws (e.g. 1992 GAO audit), and other reports indicate Defendants do harass citizens to influence potential witnesses. In this case, the facts will not go away, and they are corroborated by the unanswered original Complaint, and the unrebutted Declarations, and clinched by the cashed checks signed by the Defendants, and efendants own records showing Petitioner is absolutely correct -- and deserves relief. In this case, Defendants without evidence have relied upon perjury, subornation of perjury, and *ex parte* communications of their counsel (the Assistant Attorney General of the United States) all to muzzle the Petitioner and his data inadvertantly and unintentionally showing irregularities in Arkansas and the Massachusetts state judiciaries.

12. Defendant's actions have frustrated and hindered efforts to enforce Court orders and judgments (confer, for example, Exhibits 8 and 9 of the original Complaint). The removal of Petitioner's money by Defendant also hindered Petitioner obtaining counsel for prosecution of said violations which represent additional violations of civil rights. Most importantly, the process of governmental agencies aiding and abetting a third party (Petitioner's ex-wife) has interfered with, and precluded, seven years of a normal paternal relationship between Petitioner and his son.

13. The plaintiff made a *bona fide* case supported by substantial evidence in a Complaint filed December 6, 1996 in Federal District Court (First Circuit). Said Complaint had fifty eight averments with clearly specified means for relief (Appendix pages 12, and 20). On December 11, 1996, Amendment pursuant to Rule 15 added averments 59 through 72. There was, and has been, no answer to the Complaint. On May 1, 1997, default judgment against all of the defendants was granted by Judge Lasker, after extra time and consideration was given [Appendix F].

14. As demonstrated by copious Exhibits in the record [e.g. Appendix G], Defendants used false statements to manipulate the Court to lift the Defaults. Notably, however, Defendants failed to answer the Complaint.

15. Said false statements (Addendum page A16) to lift the default and those that have followed were written by their counsel and crafted to contain hearsay disinformational statements, conclusory averments, and utterly self-serving false declarations. Defendant's counsel was not a witness to any of the behaviors of their clients (2). What has followed is Defendants' unlawful actions to cover up this matter. But the facts stand.

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(2) Attention is directed to the fact that the misstatements and perjury has been extensive (Addendum page A16; Exhibits 1,2,5,6,41,42; Appendix page 46, cf. also p. 87), in each case with failing to simply correct errors in an honest fashion (Exhibits 1,2,15-21,28,49-52,54,56; Appendix pages 51, 54, 59,63,81, and 83).

16. NOTA BENE: Petitioner - only seeking refunds owed to him, and proven by cashed checks from 1989 and 1990 (Appendix C, see also Addenda A1-A4; Appendix 35-42) and Defendants' own records from 1992 and 1993 (Appendix D, cf. Addenda A5, A6; Appendix 33, 34) has been disparaged by Defendants. This failure to obey the law and respect cashed checks and their own records is fraud (App. 204-238), defames the Petitioner (Exhibits 1,2,15-21,28,49-52,54,56; App. 51, 54, 59,63,81, and 83; Megarry v. Norton, 137 Cal. App. 2d 581 (1955); Yorty v. Chandler, 13 Cal. App. 3d 467 (1970)] with malice [Mullins v. Brando, 13 Cal. App. 3d 409 (1970)], and is consistent with both the GAO and Congress.

17. Canceled checks are universally recognized as standard evidence for payments. Yet, these timely cashed (and endorsed) checks -- and the unrebutted Declarations and the Defendants' own records which corroborate them -- are not specifically referred to in any Court Judgment preventing comprehension of how these materials have been formally considered by the Court.

18. The Petitioner received a Judgment September 24, 1998 [Appendix A]. The Judgment was grossly erroneous in fact, contradicted both by evidence in the record, the previous Judgment of the Federal District Court on some points, and unsupported by rule, statute, or the United States Constitution. The Judgment is wrong because it stands contradicted by four unrebutted verified Declarations (App. 169-175), an unanswered Complaint (even after Default), which states how Defendants have acted with recklessness and intentional disregard of a provision of the tax law (Exhibits 6,14-21,28,42,49-51,56), and Federal statute (Exhibits 3,5,6,14-21,28,42-51); 26 U.S.C. § 7433].

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(3) Attention is also directed to the fact that there has been no response with specificity to, or dispute of, either the Complaint or the submitted verified Declarations [nor the letters and complaints from 1993 through 1995 as fully discussed in the Complaint of the above-entitled case]. Therefore the Petitioner's averments are true (Lewis v. Bours, 119 Wn.2d 667, 670 (1992)). Defendants never answered the duly-served Complaint (December 6, 1996) but used fictional excuses to lift the Default.

These are corroborated by Evidence in the records from Court officials, and neither speculative nor conclusory but documented allegations which must be substantively addressed [Atkinson v. Bohn, 91 F.3d 1127, 1129 (8th Cir. 1996)] or the dismissal is improper [Boddie v. Schneider, 105 F.3d 857, 862 (2d Cir. 1997)]. A Petition was made.

19. The Judgment is flawed because it is not an instance of merely interpreting a law one way over another, but of disregarding the law, including those laws which state the need for accurate Federal documents, those laws which enforce compliance with States' laws, and those laws which give the States control of their citizens so that said citizens might reasonably believe in the validity of their signed agreements and stipulations.

20. Petitioner requested the appeals court address issues of fact discussed below, and issues of law discussed in the section entitled "Reasons For Granting The Writ". The Petition to appeals court was denied on November 20, 1998 [Appendix B].

ISSUES OF FACT OF SIGNIFICANCE TO THIS PETITION

21. Four issues of fact, misstated by the appeals court in the judgment, have relevance to this petition, and are discussed below prior to those reasons for granting this petition, which are discussed in the next section.

The Judgment Has Ignored Unrebutted Declarations, And The Original Complaint (Still Unanswered Post-Default)

22. Attention is directed to the fact that there has been no response to, or dispute of, either the Complaint or the submitted verified Declarations. Therefore Petitioner's averments should have been taken as true (Lewis v. Bours, 119 Wn.2d 667, 670 (1992))] and the Judgment should have reflected this. It is improper for the Judgment to substitute Defendants' counsels' nonresponsive misstatements in place of a valid response to the original Defaulted Complaint and similarly unrebutted Declarations.

23. This is important because with respect to ignoring the Complaint, and verified Declarations, the Judgment rejects the reasoning of the First Circuit in at least three other cases [Marino v. Hyatt Corporation, 793 F.2d 427, 430 (1st Cir. 1986)]; Morrill v. Tong, 390 Mass. 1207 129 (1983); Chelebda v. H.E. Fortuna & Brothers Inch 609 F.2d 1022 (1st Cir. 1979)]. Most importantly, with respect to ignoring both the unrebutted verified Declarations [including Appendix E] and other evidence in the record [including Appendices C, D], the Judgment rejects the reasoning of the Supreme Court [Osborn v. Bank of United States, 22 U.S. (9 Wheat) 738 (1824))].

24. Petitioner, as Appellant, filed an Appeal Brief on April 15, 1998 and a Reply Brief on June 5, 1998 which cited verified Declarations and cashed checks corroborating said Complaint. For example, on pages 19 and 20 of the former, and pages 6-8 of the latter, it is observed that said supporting declarations are in the record. None of the filed Exhibits or Declarations are specifically referred to, or addressed in, the Court's Judgment. The Judgment ignores the Declarations and canceled checks (Appendix C, Addenda A1-A4; Appendix 35-42) which Defendants endorsed and deposited in their bank and Defendants' own official records corroborating Petitioner or said Declarations specifically referred to, are addressed in the Court's Judgment. Thus it cannot be determined from the record which if any of these materials have been formally considered by the Court.

The Judgment Makes A Claim Unsupported By Unrebutted Declaration, Endorsed Cashed Checks, And Defendants' Own Records

JUDGMENT CLAIM:

"His claim that he is owed a tax refund for these years must also be dismissed, "regardless of the suit's potential merit," because appellant has not met the jurisdictional prerequisites of having fully paid his assessed liability and having filed a timely administrative claim with the IRS. United States v. Forma, 42 F.3d 759, 763-64 (2d Cir. 1994)." [erroneous Judgment of September 22, 1998]

THE TRUTH: Appellant Totally Satisfied All Jurisdictional Prerequisites By Timely Full Payment Of All Tax Liabilities With Appropriate Forms.

25. This statement -- purporting that the Petitioner has not met the jurisdictional prerequisites of having fully paid his assessed liability and having filed a timely administrative claim with the IRS -- is utterly false and contradicted by Defendants' OWN records (Exhibits 7,8 through 13, 57, 58; Appendices 190-204; Addenda A1-A11, especially A5, A6), and the cashed checks (Appendix C) deposited into Defendants' banks which are recognized as standard receipts of proof); and the unrebutted verified Declarations. All these Exhibits in the record demonstrate that Petitioner has fully and timely met all jurisdictional prerequisites. Petitioner, through withheld taxes taken from wages and other payments, fully satisfied all taxes owed from 1989 and thereafter (Addenda A1-A7, A9-A11; Exhibits 7-13, 57, 58; and Appendices. 190-203). Furthermore, the amount of said checks EXCEEDED the taxes owed and thus Petitioner fully paid all taxes, on time, with the correct forms, and overpaid and is due a refund [Exhibits 7, 8, 9, 10, 11, 12, and 13 (confer App. 1, App. 169, pp. 12)]. Thus, the Judgment is wrong because it stands contradicted by four unrebutted verified Declarations (App. 169-175) and canceled checks (Addenda A1-A4; Appendix 35-42) which Defendants endorsed and deposited in their bank and Defendants' own records (Addenda A5, A6; Appendix 33, 34).

26. As stated in the Accountants' Declaration [Appendix E]:

"All procedures and forms were undertaken and filed correctly, although we are not certain that all deductions for which Plaintiff was eligible have been taken. Based upon the tax returns, the Plaintiff paid his taxes fully, and overpaid as well. All assessments were paid in full. There should have been no statutory assessment because Dr. Swartz paid all assessed taxes on time, and in fact overpaid. No money was due with each tax return."

[unrebutted Declaration of Petitioner's Accountant]

27. The Defendants' own records bearing the seal of the Defendants (Appendix D, Addenda A5, A6; Appendix 33, 34) and the imprint of the Defendants' own date stamps are totally consistent with the ignored Declarations and demonstrate that Petitioner paid all taxes and filed all administrative forms on time appropriately. The date stamps on said Exhibits saliently demonstrate that payments were made ON TIME. Said cashed records, Defendants' documents, and the verified Declarations (plural) and other Exhibits do **not** affirm the Courts flawed Judgment.

28. The record speaks for itself (Addenda A1-A4, A5, A6 and in Appendices 33, 34, 35-42). Said cashed checks stand as proof that all taxes were paid because by civilized custom, people paying by check are given credit, and said checks are normally sufficient to prove payment. Not only were the full taxes paid on time, out of Petitioner's pocket in good faith that credit would be given, but the payments received by the Defendants exceeded the taxes each year, and were formally rolled over to subsequent year's taxes. Petitioner paid all said taxes and the Defendants' records demonstrate not only a full payment but the existence of tax refunds due to the Petitioner, and which were timely requested but ignored by Defendants. The Petitioner demonstrated by such copious evidence that the government could not possibly prevail on its claim that plaintiff has unpaid tax liabilities [Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962); Bulbo v. United States, 633 F.2d 1137, 1139 (5th Cir. 1981); In re Carlson, 580 F.2d 1365, 1369 (10th Cir.

1978); Bob Jones U. v. Simon, 416 U.S. 725, 736 (1974); Alexander v. "Americans United," Inc., 416 U.S. 752 (1974)].

Thus, Petitioner's case must be allowed to go forward pursuant to 26 U.S.C. §7421.

29. In summary, attention is directed to the three facts. First, the Defendants never complained, or indicated or notified Petitioner of any problem, until YEARS later following their notification from a United States Congressman that the Defendants had done wrong. Second, it is observed that the Judgment must have relied upon Defendants *ex parte* pleadings (*vide infra*) because in Appellees Brief at page 25 they did admit that Petitioner paid his taxes. Third, and most importantly, simply put, the Court's flawed Judgment omits said evidence in the record. Petitioner notes that said Declarations, said cashed checks (Appendix C, Addenda A1-A4; Appendix 35-42), and said Defendants' records (Appendix D, Addenda A5, A6; Appendix 33, 34), and said jurisdictional prerequisites met, were discussed on pages 19-20, 28-31 of the former, and pages 6-8 of the latter. Nonetheless neither the discussion, nor the evidence corroborating the Petitioner nor the verified Declarations (Appendix E, App. 169-175) are specifically referred to, or addressed, in said Judgment. Thus it cannot be determined from the record which- if any - of these materials have been formally considered by the Court, or how.

30. This is most important because of the judicial exception to the Anti-Injunction Act [Exhibit 22; Enochs v. Williams Packing & Navigation Co., 370 U.S. 1 (1962)]. The taxpayer must show that (1) under the most liberal view of the facts and law, the government cannot prevail on the merits, and (2) the plaintiff does not have an adequate remedy at law. In Nut Margarine, a manufacturer of "Southern Nut Product" brought an action to restrain the government from collecting federal oleomargarine taxes on its product. Prior to the assessment, however, three lower federal court cases had held that similar products were nontaxable and, by letter, the tax collector had informed the manufacturer that its product was not subject to the tax.

In Enochs, District Director Of Internal Revenue, V. Williams Packing & Navigation Co., Inc., Mr. Chief Justice Warren delivered the opinion of the court.

> **".. SEC. 7421(A) OF THE INTERNAL REVENUE CODE OF 1954 PROVIDES:**
>
> **"EXCEPT AS PROVIDED IN SECTIONS 6212(A) AND (C), AND 6213(A), NO SUIT FOR THE PURPOSE OF RESTRAINING THE ASSESSMENT OR COLLECTION OF ANY TAX SHALL BE MAINTAINED IN ANY COURT." ... THE MANIFEST PURPOSE OF SEC. 7421 (A) IS -TO PERMIT THE UNITED STATES TO ASSESS AND COLLECT TAXES ALLEGED TO BE DUE WITHOUT JUDICIAL INTERVENTION, AND TO REQUIRE THAT THE LEGAL RIGHT TO THE DISPUTED SUMS BE DETERMINED IN A SUIT FOR REFUND. IN THIS MANNER THE UNITED STATES IS ASSURED OF PROMPT COLLECTION OF ITS LAWFUL REVENUE. NEVERTHELESS, IF IT IS CLEAR THAT UNDER NO CIRCUMSTANCES COULD THE GOVERNMENT ULTIMATELY PREVAIL, THE CENTRAL PURPOSE OF THE ACT IS INAPPLICABLE AND, UNDER THE NUT MARGARINE CASE, THE ATTEMPTED COLLECTION MAY BE ENJOINED IF EQUITY JURISDICTION OTHERWISE EXISTS. IN SUCH A SITUATION THE EXACTION IS MERELY IN "THE GUISE OF A TAX." ID., AT 509.**
>
> [Epochs V. Williams . 370 U.S. I;
> No. 493. 291 F.2D 402]

31. In the present case, the cashed checks exceeding the amount of the requisite tax for each and every year [ignoring for a moment the years of harassment including the improperly seized and then missing child support accounts] satisfy both Enoch, and the satisfied Nut Margarine, conditions. The Petitioner has far exceeded any burden of producing evidence [Commissioner v. Shapiro, 424 U.S. 614, 628 n.10 (1976)], and thus has shown that the government cannot prevail on the merits.

The Judgment Ignores The Original Complaint

JUDGMENT CLAIM:

"Finally, since appellant has not "established a claim or right to relief,'" the district court did not err in setting aside the default judgment which it had entered against the government. See Fed. R. Civ. P. 55(e)." [erroneous Judgment of September 22, 1998]

THE TRUTH:

32. The Judgment has an important misstatement of fact. It stands contradicted by unrebutted Declarations and the original Complaint. Petitioner **did** state a claim for relief. Petitioner made a *bona fide* case, supported by substantial evidence with a specified means for relief. [App. 12, and 20, Appendix 401; Droukas v. Divers Training Academy, 375 Mass. 149, 159 (1978); Marino v. Hyatt Corporation, 793 F.2d 427, 430 (1st Cir. 1986)]; Morrill v. Tong, 390 Mass. 1207 129 (1983); Chelebda v. H.E. Fortuna & Brothers Inch 609 F.2d 1022 (1st Cir. 1979)]. This established claim of relief was present in the original Complaint and this was confirmed in the Federal District Court because Defaults were issued. Rule 55 (e) states:

> **No judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.**

33. Petitioner's Reply Brief cited said claims to relief in the original Complaint on pages 11 and 12, and even gave a Table 11 to demonstrate this with particularity and specificity.

34. Like other Americans, Petitioner requested that all refunds be returned to him. Petitioner also requested that the record correctly reflect facts consistent with said cashed checks and Defendants' own records. Petitioner stated he wants to know the whereabouts of all (total) missing money (from two child support accounts, from several years of tax payments and refunds due, from IRA accounts, from interest and all the remaining bank accounts taken by Defendants). Petitioner requested relief consisting of total credit for all of his checks endorsed and cashed by Defendants.

Defendants are intent on taking all of Petitioner's property and failing to give credit to deprive him permanently [People v. Jaso, 4 Cal. App. 3d 767 (1970)]. To target Petitioner by this flawed judgment is unfair. Petitioner deserves freedom from double jeopardy consisting of Defendants' unlawful attempts to repeatedly recollect what has already been paid. If this is not a claim of relief, what is?

35. Neither Table 11, nor the averments in the Complaint which support the Petitioner, nor the Declarations are specifically referred to in the Judgment. Thus it cannot be determined from the record which- if any - of these materials have been formally considered by the Court.

The Judgment Uses An Improperly Stated Law

JUDGMENT CLAIM: *"26 U.S.C.§6402(f) specifically bars any federal court from hearing appellant's claim that the IRS erred in transferring his tax refund to California authorities for allegedly past due child support payments. This jurisdictional bar rests on the recognition that "the IRS does not have the information and resources needed to adjudicate the validity of the alleged child support arrearage." Satorius v. IRS, 671 F. Supp. 592, 594 (E.D. Wis. 1987). The duty of the IRS in this matter is simply ministerial. It "doles] no more than retain and transfer an amount certified by the State agency. [It] makers] no determinations of liability and ability to pay." Larsen v. Larsen, 671 F. Supp. 718, 720 (D. Utah 1987), aff'd 871 F.2d 1095 (lOth Cir.), cert. denied, 493 U.S. 844 (1989)."* [erroneous Judgment of September 22, 1998]

THE TRUTH:

36. The above is a misstatement in four (4) ways. This is not a properly stated law, and is misapplied. First, 6402(f) is improperly cited. §6402(f) deals with the definition of a Federal agency (Exhibits page 52-53) and not what is claimed above. Second, §6402(c), which is the correct section, is not even relevant, because the Petitioner has remained in Massachusetts, where the Probate Court case has been ordered to remain by both California and Massachusetts.

By Federal law [Addendum A8 citing Sec. 667], Petitioner did not owe back child support, but nonetheless has been regularly sending child support checks each and every month. A number of checks have been returned when the third party refused to sign a Return Receipt Card, and does not actually need the money since she is a multimillionaire. Examples of this were present in the Complaint and record. These are facts supported by statute, and Exhibits in the record. Thus, the Judgment is unconstitutional because Petitioner would be denied this protection which all other US citizens have. Defendants are attempting to regulate and violate not only three Court orders from two states, but US statute because no action can be legally taken by Defendants pursuant to the governing provisions of 42 U.S.C. §664(a) and 26 U.S.C. §6402(c).

37. Third, §6402 is inappropriate because it is not Petitioner who is "out-of-state" as required in said statute. In this case, there also were Court orders from both California and Massachusetts dealing with jurisdiction and explicitly attempting to prevent exactly what has occurred. The Judgment conveniently omits specifically addressing this because it would then be obvious that said Judgment is unconstitutional because Petitioner would also be denied this protection explicitly stated in the US constitution (*vide supra*). Fourth, §6402 is not relevant because Defendants' unlawful, unauthorized, and illegal actions occurred retroactively after all applicable periods of limitation expired (these were 1989 payments). There was never a notification to Petitioner by the IRS that there was an error as required, nor did Petitioner authorize this illegal transfer as required by §6402 but also conveniently ignored in the Judgment.

38. In summary, the Exhibits already in the record, supported by 42 U.S.C. §664(a), demonstrate that 26 U.S.C. §6402(c) is not applicable.

REASONS FOR GRANTING THE WRIT

Should the Federal government [the Defendants, the IRS] be allowed to federalize actions already covered by state law?

39. No. In this case, Defendants are attempting to federalize, regulate, and do everything but comply with state Court orders and state Court agreements. The Federal government [the Defendants, the IRS] cannot regulate or federalize actions already covered by state law. There is no authorization to do so and it is, therefore, unconstitutional and interferes with judicial economy by needlessly contributing to the federal caseload by prolonging a case where the facts persist.

40. The Judgment ignores that Defendants usurped state laws [including explicit Court orders of both Massachusetts and California (cf. Addenda A12-A14)]. The judgment thus rejects the reasoning of the United States Constitution which protects the rights of the individual from interference by the federal and state governments.

41. Furthermore, the Judgment does not comply with the Fourteenth Amendment which guarantees equal protection of the laws. Petitioner has rights protected by the US Constitution and Common law which demand that printed Court rules, and Federal statutes, and Court orders, be enforced - and recognized and respected by each state.

42. To let this ruling stand, gives the IRS the right to choose when (and if) cashed checks (Appendix C) shall be counted, to interfere in family heritage disputes regarding children, to arbitrarily collect for third parties and to never even give accounting of all the missing assets it takes. The Supreme Court must rule whether we are all truly equal under the law, or if selected individuals like the Defendants are "above the law", and if former journalists, or scientists, and witnesses like the Petitioner can be targeted with usurpation of their civil rights, property, and hope. The Supreme Court must rule if the Federal government can, without even consideration of the facts, interfere with signed orders and

Agreements which were signed in the belief that the Federal government would respect State law.

Should the Defendants without either authority or jurisdiction have the power to regulate probate Court matters already decided by two states?

43. No. Defendants having neither authority nor jurisdiction and should not be allowed to regulate probate matters already decided by the states, and in this case, two states. Thus, the actions of the Defendants and the Judgment are not compliant with the US Constitution. Because of the noncompliance with Federal and state laws, and Court orders of both Massachusetts and California (Appendices H, I, J), the actions of the Defendants and the Judgment fails to comply with Article VI which prohibits actions that interfere with the Constitution or laws passed by Congress. This case should have be handled on the local Massachusetts level where Court orders from two (2) states and signed Agreements ordered it remain. Massachusetts is fully equipped to handle the matter, and the US Congressman (and Petitioner) who queried the Defendants deserved to be properly and substantively answered.

Can Defendants Fail to Give Credit for Timely Paid Tax Payments made which are corroborated by Defendants' Own Records, and Defendants' endorsement on Petitioner's cashed checks?

44. No. The Judgment does not comply with Article IV, Section 1 which explicitly states that Petitioner is entitled to full faith and credit for his payments and for the Court orders from both California (Appendix J, Addendum A14) and Massachusetts (Appendices H, I; Addenda A12 and A13). The cashed checks (Appendix C), the verified Declarations (Appendix E), and Defendants own records (Appendix D), corroborate the Petitioner and contradict the flawed Judgment. It is believed that the Court must concede this error in the Judgment because there is substantial law, dating back to Hammurabi, to the effect that receipts including cashed checks are valid [emphasis added], and they - and the

verified Declarations - affirm the Petitioner's Complaint. Petitioner has the right to insist that contracts he signed be enforced, that the laws be enforced, that perjury be addressed, and that Petitioner get an accounting and credit for his cashed checks and withheld wages. To do otherwise is an obstruction of justice and an assault on the rule of law. Petitioner so far has been subject to selective application of law and outright attempts to silence him, his witnesses and Declarants.

Should Defendants be allowed to ignore an inquiry by a United States Congressman, and then undertake a pattern of harassment including repeated failure to give credit for cashed checks that bear Defendants' own endorsement, and despite Defendants' own records demonstrating full, timely payments with refund owed Petitioner?

45. No. Defendants should have paid attention to the evidence including the cashed checks, and their own records [Rannard v. Lockheed Aircraft Corp., 26 Cal. 2d 149 (1945)]. It is reprehensible that Defendants ignored a serious Congressional inquiry by Massachusetts Congressman Ed Markey. Defendants should have paid attention and complied with both the law and Court orders. There is a jurisdictional bar explicitly preventing IRS interference on the recognition that "the IRS does not have the information and resources needed to adjudicate the validity of the alleged child support arrearage." [Satorius v. IRS, 671 F. Supp. 592, 594 (E.D. Wis. 1987)]. In this case, the State having jurisdiction was Massachusetts. This was confirmed by Court orders from both Massachusetts (in two Court actions) and California. There was a duty of the IRS in this matter to remain impartial and non-discriminatory. That impartiality -- and nondiscrimination -- did not occur. Petitioner timely paid all taxes. Thus, Defendants did not have the authority or right to do what they have done. The Judgment does not comply with Article I, Section 2 which declares that the Petitioner is entitled to the privileges and immunities of citizens in the other states.

46. With respect to ignoring the Stipulations, the two State Court Orders, and the cashed checks, the Judgment rejects the reasoning of Courts in both Massachusetts and California where the Court Orders were issues and the Supreme Court's decision in United States v. Nixon (1974) that all are "equal under the law".

47. Attention of the Court is directed to the simple fact that even the threat of harassment of Petitioner was improper after Defendants failed to give credit for cashed checks bearing Defendants' own endorsement. It is reprehensible and odious that Defendants have ignored Defendants' own records. Defendants purport authority to investigate fraud. Here, after notification by Petitioner, an Assistant District Attorney, and a United States Congressman, an investigation should have occurred - especially because their own records confirm(ed) the Petitioner. Instead, a convenient cover-up with misstatements, inaction, and other egregious actions followed all under color of law.

As a result of the unwarranted lien alone, Petitioner is entitled to sue and is entitled to damages (Exhibit 20, Griswold, v. USA).

IMPLICATION OF ERRONEOUS JUDGMENT

Does the law read differently for the powerless and the powerful?

48. No. Defendants defaulted (Appendix F, Addendum p. A15). Federal Rules Civil Proc. 55 explicitly requires a "good" reason. In this case, the Defendants showed neither. Proper service was made upon all defendants (Appendix G, Table 10). Perjury was used to lift the Default (Add. A16, App. 87, 46 confer People v. Pierce, 66 Cal. 2d 53 (1967). False statements are hardly "good reasons" for dismissal (App. 184). "Good cause" is "not so elastic as to be devoid of substance." [Coon v. Grenier, 867 F.2d 73 (1st Cir. 1989)]. Defendants failed each guideline (App. 180; Exhibits 8, 9, 56). There is absolutely no good faith on the part of the Defendant (App. 46-83; pp. 309-335), and so by failing to appear and contest the action, the Defendant acquiesced entry of judgment

[Fed. R. Civ. P. 54(c); Cal. Civ. Proc. Code 5580; *infra*, 3846]. IF all are equal under the law, then the law must not read differently for the ruler and the ruled.

Should perjury and Harassment be Ignored When it is by the Federal Government?

> **"He who permits himself to tell a lie once, finds it much easier to do it a second and a third time, till at length it becomes habitual; he tells lies without attending to it, and truths without the world's believing him."**
>
> Thomas Jefferson

49. The Judgment is in conflict with the law and the US Constitution, but as importantly, for as long as it stands, it fosters perjury as well. Defendants have not used the truth but have fabricated and misstated the facts to influence the Court (App. 174-184; Addendum p. A16; Exhibits 1,2,5,6,41,42; App. 46, cf. also 87). Defendants own records (Appendix D, Addendum A5 and A6) herald that Defendants **knew** their false statements to be false *a priori* [Niehot'f v. Sahagian, 103 A.2d 211 (Me. 1954)]. The flawed judgment is wrong as a matter of law to substitute a fictitious story falsely contradicted by Exhibits and statute (Exhibits 6,14-21,28,42,49-51,56; App. 188, 207-308; also Exhibits 3,5,6,14-21,28,42-51). By law, Defendants' (including the *ex parte*) misstatements must be given little or no weight since Defendants' own records and official endorsement on Appellants cashed checks contradict said misstatements.

50. With respect to ignoring the malicious and perjurious role of the Defendants, the erroneous Judgment rejects the reasoning of the Supreme Court [U. S. v. Price, 86 S. Ct. 1152, 1157, footnote 7], and several Appeals Courts [Sawtelle v. Farrell, 70 F.3d 1381, 1387 (1st Cir. 1995); Leasco Data Processing Equip. Corp. v. Maxwell, 468 F.2d 1326 (2d Cir. 1972); Pizarro v. Hotels Concorde Int'l, C.A., 907 F.2d 1256 (1st Cir. 1990); Peckham v. Continental Casualty Ins. Co., 895 F.2d 830, 836 (1st Cir. 1990); Donatelli v. National Hockey League, 893 F.2 459, 465 (1st Cir. 1990)).

51. The judgment is flawed because it encourages noncompliance with Federal law (Exhibits 3,5,6,14-21,28,42-51, Appendices 213 through 250, and 204-206, and 12, and 207 through 212), tax law (Exhibits 6, 14-21, 28,42, 49-51,56), statute (Exhibits 19,20, 29-32, App. 279, 287, 288), civil rights law (1-4,6, 14-17, 19-21, 28,34,35-37, 43-51, 56; especially 3,5,6,14-21,28,42-51; App. 161, 207-212, 296-333), and other Court decisions.

52. The Court should not substitute *ex parte* false statements unsupported by the evidence in the record [Appendices C, D, E]. Petitioner is supported by substantial evidence including a clearly specified means for relief [App. 12, and 20, Appendix 401]. Defendants' own documents confirm that the defendants knew that they had taken the money (App. 184; App. 317-333, and especially 336).

53. Criminal statute specifically is purported to prevent such misuse of government lawyers and employees, viz. 18 U.S.C. Sec. 287 (making false claim); 2 U.S.C. Sec. 286 (conspiring to defraud the government in obtaining payment of false claims); 18 U.S.C. Sec. 1001 (making false statements or writings); 18 U.S.C. Sec. 641 (knowingly stealing); and 18 U.S.C. Sec. 371 (conspiracy to defraud). The actions of the Defendants against the Petitioner has shown a pattern of fraud and perjury (Exhibits 6,19,20,27,42-48; App. 308-337), and obstruction of justice (Exhibits 6,19,20,27,42-48; [18 U.S.C.A. ¤1961 et seq.; 18 U.S.C.A. ¤1962. Moss v. Morgan Stanley, Inc., C.A. N.Y., 719 F.2d 5, 17]). As a result of the unwarranted lien alone, Petitioner is entitled to sue and is entitled to damages (Exhibit 20, Griswold, v. USA). Defendants have a history of attacking US citizens (Exhibits 6,19,20,27,42-48; App.309-335). If this Judgment stands uncorrected, there is now permissible selective targeting of Americans and other violations of the US Constitution. The flawed Judgment must be corrected immediately to avoid further prejudice to the Petitioner.

Should Impropriety Including *Ex-Parte* Communications Be Ignored When It Is By The Federal Government?

54. Why has this occurred? One hypothesis is as follows. Petitioner investigated the judiciary as part of a scientific United States-wide forensic investigation of US citizen satisfaction. The Petitioner truly regrets that such a scientific examination was serendipitously discovered. Petitioner, former journalist (Addendum A17), physician and scientist has since been targeted for having unwittingly uncovered possible judicial irregularities that appeared to focus, by sheer chance, upon the Commonwealth of Massachusetts and the state of Arkansas (Appendix K, Addendum A18). By reporting the findings of said examination to the Department of Justice, Petitioner was thereafter denied further data. Instead, since circa 1993, as described in the (unanswered) Complaint, the Defendants began an increasingly malicious and unethical attack on the Petitioner by issuing fraudulent Summons, levies, and liens for taxes already paid, and even abrogating Court orders by dispensing Appellants' assets to a third party.

55. Attention of the Court has been directed to the cover of the Judgment which demonstrates that the Defendants (who have never answered the Complaint, and were sued individually as well as Officers) apparently now have a new counsel: the Assistant Attorney General of the United States of America, Ms. Loretta C. Argrett. Yet there is not a single preceding document in the record with either her name, yet her name and office suddenly appear *de novo* in the Judgment with new matters falsely stated and never before in the record. Thus, said counsel neither made a formal appearance, nor submitted her *ex parte* comments/pleadings/communications to Petitioner. There is no explanation for this deviation again from the rule of law, whatsoever. Accordingly, the Petitioner did thrice request the Honorable Court to indicate how said counsel's name suddenly appeared on said Judgment. Petitioner has yet to receive a single letter, Notice of Appearance, or any other pleading with the Assistant Attorney General's name. Where did it, and the incorrect

de novo statements, come from? Not even the requested Docket, request thrice including by Motion, has been provided.

56. Petitioner is *pro se*, and is presumably entitled to less stringent standards [for example, U.S. Rep volume 404, pages 520-521 (1972)]. However, in this case, it is the Defendants who have had less stringent standards. The Defendants have never EVER had to answer the Complaint, the Declarations, their own papers and statements which support the Petitioner. The evidence in the record shows that Defendants made a series of affirmative steps against the Plaintiff [Lancey v. United States, 356 F. 2d 407 (9th Cir. 1966)], but Defendants have never explained why, or how government-paid lawyers can protecting them individually. The Defendants have never had to explain either their false statements, or why they ignore their endorsement on Petitioner's (cashed) checks, or why they ignore their own records affirming Petitioner's original complaint of the above-entitled action.

SUMMARY

57. Defendants, individually and as Officers, were sued for actions and inaction for which there is no immunity because they have acted willfully and repeatedly under color of law. This Court has final supervisory jurisdiction over the subject matter. Because of the Defendants' actions, and the patent clarity of the Exhibits corroborating Petitioner (including some of Defendants' own records), there is compelling reason for this Court to correct this situation in supervisory capacity. Judicial discretion is warranted because the Defendants are the powerful, and there is imperative public importance for honesty and full accounting, and for correction pursuant to both long-standing and international norms.

58. What is in dispute is whether the Petitioner's checks - cashed by the Defendants on time - shall be honored like any other US citizen. Petitioner has a right to expect his paid checks, paid on time and with appropriate forms, are counted. To the Petitioner, and to this court in the past, this is a major issue.

> **"Taxpayers can be vigilant private attorneys general. Their stake in the outcome of litigation may be *de minimis* by financial standards, yet very great when measured by a particular constitutional mandate."**
> [Concurring opinion of Mr. Justice Douglas from Flast v. Cohen, 392 U.S. 83, 109 (1968)]

59. What is in dispute is whether the Constitution does really apply to all. Supremacy of law demands that the Court correct this given evidence already in the record [Appendices C, D, E; Exhibits 1-58, Add. A1-A20, and Appendices pp. 12 through 337] or admit that we are not "equal under the law". Petitioner had the right to allocate tax refunds as he wished under either Revenue Ruling 73-305 or 79-284 [also United States v. Pepperman, 976 F.2d 123, 127 (3d Cir. 1992)]. The rule of law must not become only a cliché, because it and truth are civilization's only weapons against anarchy.

60. It is appropriate to summarize for the court the gravamen of this case by analogy to the old equitable maxim,

> **"He who seeks equity must do equity," which the chancellors used to apply when they sat as the conscience of a sovereign king."**
> [UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT; No. 93-7007 LUCY FRECK, v. INTERNAL REVENUE SERVICE, Appellee, on Appeal from the United States District Court for the Middle District of Pennsylvania (D.C. Civil Action No. 90-02141)]

The Complaint states a claim upon which relief must be given [South Carolina v. Regal, 465 U.S. 367, 373-84 (1984)].

61. What is in dispute is whether a witness - the Petitioner - shall be protected in the United States. Failure - and further delay is not only inconsistent with Fed. Rule Civ. Proc 1, but is unconstitutional, in flagrant violation of IRC Section 7214(a)(1), and contributes to a corrosive erosion of public confidence in the probity of the judicial system. Defendants should not be encouraged to assess citizens for taxes they do not owe and harassing them into paying those taxes (Rutherford 83-1 USTC Par. 9289, 51 AFTR2d83-1084; Miklautsch v. Comm, No. A89-291 Civil, 11/6/90). The United States Supreme Court is the Petitioner's last source of relief.

62. There may be inadequacies and a lack of normal attorney eloquence in this Petition, but the Petitioner is not a lawyer, and is *pro se*, robbed of nearly everything but his freedom by the Defendants, and as such the Petitioner requests mercy from the United States Supreme Court.

CONCLUSION

This petition for writ of certiorari should be granted.

Respectfully submitted,

Dr. Mitchell Swartz, *pro se*
P.O. Box 81135
Wellesley Hills, MA 02481-0001
(781) 237-3625

Certificate Of Service

I certify that three copies of the above Petition have been mailed first class prepaid to the Defendants' attorney of record, Attorney John A. Nolet, Appellate Section, PO Box 502, Washington, D.C. 20044, this February 15, 1999.

Mitchell Swartz

Certificate Of Mailing

To Whom it Does Concern:
I hereby certify that this Petition, forty copies, has been deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to
"Office of the Clerk
SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, DC 20543" on the date below.
Thank you.
February 15, 1999
M.R. Swartz

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

September 22, 1998.

Per Curiae. Having carefully reviewed the record in this case, including the briefs of the parties and the decision of the district court, we affirm the dismissal of all appellant's claims. We add only the following.

26 U.S.C. § 6402(f) specifically bars any federal court from hearing appellant's claim that the IRS erred in transferring his tax refund to California authorities for allegedly past due child support payments. This jurisdictional bar rests on the recognition that "the IRS does not have the information and resources needed to adjudicate the validity of the alleged child support arrearage." Satorius v. IRS, 671 F. Supp. 592, 594 (E.D. Wis. 1987). The duty of the IRS in this matter is simply ministerial. It "doles] no more than retain and transfer an amount certified by the State agency. [It] makers] no determinations of liability and ability to pay." Larsen v. Larsen, 671 F. Supp. 718, 720 (D. Utah 1987), aff'd 871 F.2d 1095 (lOth Cir.), cert. denied, 493 U.S. 844 (1989).

Appellant's allegation that he has been the victim of IRS harassment in its attempt to collect taxes is without merit. In order to collect damages "in connection with the collection of Federal tax," appellant must show that the IRS acted with recklessness or intentional disregard of a provision of the tax law. 26 U.S.C. § 7433. The only examples of harassment alleged are a summons seeking information relating to appellant's 1990 and 1992 tax returns and a notice of intent to levy for unpaid liabilities for these years. Appellant alleges that these actions are not good faith attempts to examine his return or to collect taxes owed but retaliation for the institution of his suit against the IRS.

Since the only support for the claim that these actions were not taken in good faith is appellant's conclusory allegation of a retaliatory motive, this claim was properly dismissed. See Boddie v. Schneider, 105 F.3d 857, 862 (2d Cir. 1997) (complaint of retaliation which contains only speculative and conclusory allegations properly dismissed); Atkinson v. Bohn, 91 F.3d 1127, 1129 (8th Cir. 1996) (same).

Since appellant fails to show that the government could not possibly prevail on its claim that plaintiff has unpaid tax liabilities for the years 1990 and 1992, See Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962), his request for an injunction is barred by 26 U.S.C. § 7421.

His claim that he is owed a tax refund for these years must also be dismissed, "regardless of the suit's potential merit," because appellant has not met the jurisdictional prerequisites of having fully paid his assessed liability and having filed a timely administrative claim with the IRS. United States v. Forma, 42 F.3d 759, 763-64 (2d Cir. 1994). None of the other claims raised by appellant has any merit.

Finally, since appellant has not "established a claim or right to relief,'" the district court did not err in setting aside the default judgment which it had entered against the government. See Fed. R. Civ. P. 55(e).Appellant's motion for sanctions is denied. His motion for an injunction is denied as moot.

Affirmed. See 1st Cir. Loc. R. 27.1.
No. 98-1 058
MITCHELL SWARTZ,
Plaintiff, Appellant,
v.
INTERNAL REVENUE SERVICE, ET AL.,
Defendants, Appellees.
JUDGMENT
Entered: September 22, 1998

APPENDIX B

United States Court of Appeals

For the First Circuit

No. 98-1058

MITCHELL SWARTZ,

Plaintiff, Appellant,

v.

INTERNAL REVENUE SERVICE, ET AL.,

Defendants, Appellees.

Torruella, Chief Judge,
Campbell, Senior Circuit Judge,
Selya, Boudin, Stahl, Lynch and Lipez,
Circuit Judges.

ORDER OF COURT

Entered: November 20, 1998

Petitioner's request for a rehearing, and rehearing en banc, of this court's opinion and judgment dated September 22, 1998, is denied. All other outstanding motions filed by petitioner are denied.

By the Court:

PHEOBE MORSE,

Clerk.

By: JANICE M. O'NEIL
Chief Deputy Clerk

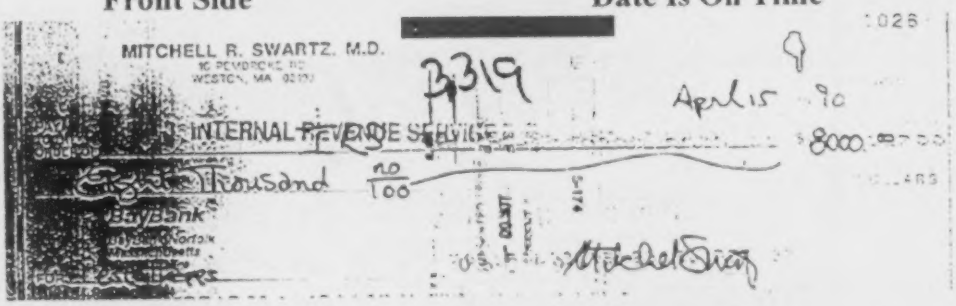
[cc: Messrs. Swartz, Nolet, and Cardone]

Issuing Court: United States Court of Appeals
for the First Circuit

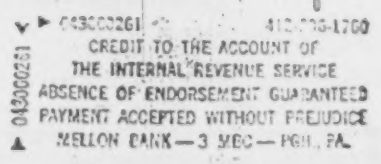
Number of Case: 98-1058

Date of Denial: 11/20/1998

Front Side **Date Is On Time**

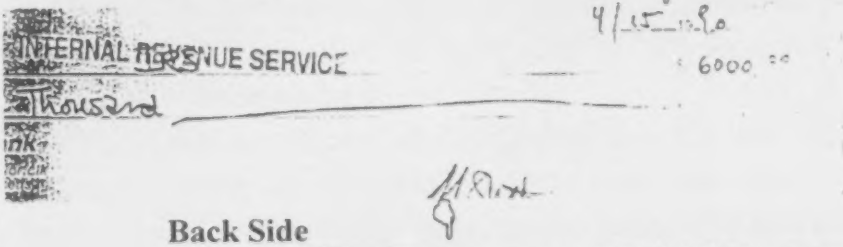


Back Side


CREDIT TO THE ACCOUNT OF
THE INTERNAL REVENUE SERVICE
ABSENCE OF ENDORSEMENT GUARANTEED
PAYMENT ACCEPTED WITHOUT PREJUDICE
MELLON BANK—3 MBC—PGH, PA

Official Endorsement Stamps Of Defendants Corroborating Petitioner, Showing Taxes Were Paid, Received, And Accepted.

Front Side **Date Is On Time**



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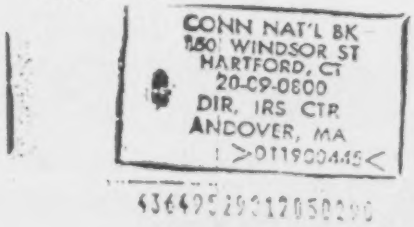


Official Endorsement Stamps Of Defendants Corroborating Petitioner, Showing Taxes Were Paid, Received, And Accepted.

APPENDIX C

Copy for the Court of Addenda A1 and A2 Demonstrating that Petitioner Paid On Time and is Owed Tax Refunds

Two of the actual cashed checks denied by Appellees and ignored by the Court. These checks and withheld wages were paid to the IRS on time, and were in excess of the taxes, and were filed with appropriate administrative forms. -Attention is directed both to the dates, and the date stamp highlighted by a "pointer" .

Department of the Treasury
Internal Revenue Service
ANDOVER, MA 05501

Date of this notice: SEP. 15, 1993
Taxpayer Identifying Number:
Form: 1040 Tax Period: DEC. 31, 1990

MITCHELL R SWARTZ
16 PEMBROKE RD
WESTON MA 02193-2247163

For assistance you may call us at:
617 536-1040 LOCAL BOSTON
1-800-829-1040 ST. OF MA

Or you may write to us at the address shown at the left. If you write, be sure to attach the bottom part of this notice.

CORRECTION NOTICE - REDUCED AMOUNT APPLIED TO ESTIMATED TAX

WE HAVE CORRECTED AN ERROR ON YOUR RETURN FOR THE ABOVE TAX YEAR. THE CORRECTION IS EXPLAINED BELOW. YOU MAY WANT TO CHECK YOUR FIGURES AGAINST OURS. IF YOU BELIEVE WE MADE A MISTAKE, PLEASE WRITE TO US AND INCLUDE THE BOTTOM PART OF THIS NOTICE. YOUR TAX RETURN SHOWS YOU WANT $6,791.00 OF THE AMOUNT YOU OVERPAID APPLIED TO YOUR 1990 ESTIMATED TAX. HOWEVER, WE APPLIED ONLY $.00 TO THAT TAX BECAUSE OF THIS CORRECTION. SINCE WE HAVE NOT APPLIED THE FULL AMOUNT, YOU MAY WANT TO:

(1) CORRECT YOUR COPY OF THE TAX RETURN,
(2) AMEND YOUR DECLARATION OF ESTIMATED TAX, AND
(3) INCREASE YOUR ESTIMATED TAX PAYMENTS (OTHERWISE, YOU MAY BE CHARGED A PENALTY FOR UNDERPAYMENT).

	TAX STATEMENT		
ADJUSTED GROSS INCOME (YOUR FIGURE)	$50,409.00	OVERPAYMENT	$11,245.00
		LESS:	
TAXABLE INCOME (YOUR FIGURE)	15,859.00	PENALTY	.00
TAXABLE INCOME (CORRECTED)	17,802.00	INTEREST	.00
TAX WITHHELD	30.00-	AMOUNT APPLIED TO NEXT YEAR'S ESTIMATED TAX	

According To These Documents Of Defendant Petitioner Is Owed A Refund

Defendant's Own Records Show that Plaintiff Overpaid in 1991 Ignored by Defendants Page Addendum A6,

.0864

08221-036-05332 9305 CP: 47

Department of the Treasury
Internal Revenue Service
ANDOVER, MA 05501

Date of this notice: FEB. 15, 1993
Taxpayer Identifying Number:
Form: 1040 Tax Period: DEC. 31, 1991

MITCHELL R SWARTZ
16 PEMBROKE RD
WESTON MA 02193-2247163

FOR ASSISTANCE FROM THE AGENCY THAT REFERRED YOUR DEBT TO US, YOU MAY WRITE TO:

DISTRICT ATTORNEY OFFICE
801 CIVIC CENTER DRIVE WEST
SUITE 200 CHILD SUPPORT
SANTA ANA, CA 92702

OR CALL:

(714) 541-0251 LOCAL

CIRS NUMBERS ARE LISTED BELOW:

OVERPAID TAX APPLIED TO PAST-DUE OBLIGATION NAFDC CA

WE HAVE APPLIED ALL OR PART OF YOUR REFUND TO FULLY OR PARTIALLY SATISFY A PAST-DUE OBLIGATION REFERRED TO US BY ANOTHER GOVERNMENT AGENCY. THIS ACTION IS REQUIRED BY SECTION 6402(C) OR (D) OF THE INTERNAL REVENUE CODE. FOR QUESTIONS ABOUT THE OBLIGATION, OR IF YOU BELIEVE THE AMOUNT IS IN ERROR, CONTACT THE AGENCY AT THE ADDRESS OR TELEPHONE NUMBER SHOWN IN THE UPPER RIGHT CORNER OF THIS NOTICE.

OBLIGOR'S SSN: 034-36-4932

TAX STATEMENT

REFUND ON INCOME TAX RETURN:	$1,954.00
AMOUNT OF REFUND APPLIED TO THE AGENCY DEBT:	$1,954.00
AMOUNT TO BE APPLIED TO OTHER OBLIGATIONS, REFUNDED, OR APPLIED TO YOUR ESTIMATED TAX: (IF THERE IS AN AMOUNT TO BE REFUNDED, BY IRS, INTEREST DUE YOU WILL BE ADDED.)	$.00

FOR REFUND INFORMATION CALL:

APPENDIX D

Actual Copy for the Court of Addenda A5 and A6

Two of Defendants' own archival records. Each record does corroborate that the Petitioner that he overpaid his taxes, on time, and was owed a refund for each year. Defendants' own documents confirm Petitioner. Attention is directed both to the dates, and the official stamp, on these two official forms which are highlighted by a "pointer" .

APPENDIX E

(retyped copy of Declaration of Accountant)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Civil Action No. 96- 12468-MEL

Mitchell Swartz, Plaintiff
v.
Internal Revenue Service, et alia
July 25, 1997

Declaration of Accountant Charles Swartz, CPA

I, Charles Swartz, declare that I am a citizen of the United States of America.

1. My field of experience is that of accounting. I have nineteen years of such accounting and tax experience. I am a certified public accountant, Certified in 1982. I trained and received a Masters in Accounting (MA) at Bentley. I presently work at Swartz, Polacheck & Company, located at 220 Reservoir Street, Needham, Massachusetts 02194

2. I am no relation to Dr. Swartz, and did not know him before becoming his accountant several years ago. In addition, I have prepared the Plaintiffs returns for the years 1989 through 1992, and have a signed Form 2848 which has given me Power of Attorney and Declaration of Representative for those years.

3. In 1989, Dr. Swartz made an overpayment of eleven thousand two hundred forty five dollars ($11,245).

4. In 1990, we took credit for the 1989 overpayment of $11,245. Dr. Swartz had also made other overpayments and was entitled to a refund of seventeen thousand five hundred forty seven dollars ($17,547). However, Dr. Swartz has received no credit for his payments in 1989 which we noted in the return.

5. To date, Dr. Swartz has received no credit for payments in 1990 amounting to at least $34,000. But the cashed checks exist, and those checks were cashed by the Internal Revenue Service.

6. In 1991, Dr. Swartz made an overpayment of one thousand nine hundred fifty four dollars ($1,954).

7. Dr. Swartz still has received no credit for his previous overpayments, or his cashed checks.

8. In 1992, Dr. Swartz owed no taxes.

9. We are not certain that all deductions for which Plaintiff was eligible have been taken.

10. Therefore, Dr. Swartz has received no credit for his previous overpayments, or his cashed checks. I conclude that Dr. Swartz was not received the proper credit for these amounts hich are due to him.

(signed)
Charles Swartz

Date: July 25, 1997
Swartz, Polacheck & Company
220 Reservoir Street
Needham, Massachusetts 02194

Verification

I, Charles Swartz, herewith state under the penalties of perjury that I have read and understand the above Declaration, and that all the statements therein are true, to the best of my information, knowledge, and belief.

Charles Swartz Date:

APPENDIX F

All of the Defendants Defaulted.

An actual copy of only one Notice is provided here.

U

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Michell Swarty
Plaintiff

V.

IRS, Margaret Richardson, Wm. Caine
Defendant

CIVIL ACTION
NO. 96-12468-MEL

US CT Appeals First Circuit No. 98-1058
Default Judgment against Defendants
Richardson, Caine AND IRS
Page Addendum A15

NOTICE OF DEFAULT

Upon application of the Plaintiff, Mitchell Swarty
for an order of Default for failure of the Defendant, IRS - Richardson
Caine, to plead or otherwise defend as provided by
Rule 55(a) of the Federal Rules of Civil Procedure, notice is hereby given that the
Defendant has been defaulted this 1st day of May, 1997.

TONY ANASTAS, CLERK

By: Sheila Dukes
Deputy Clerk

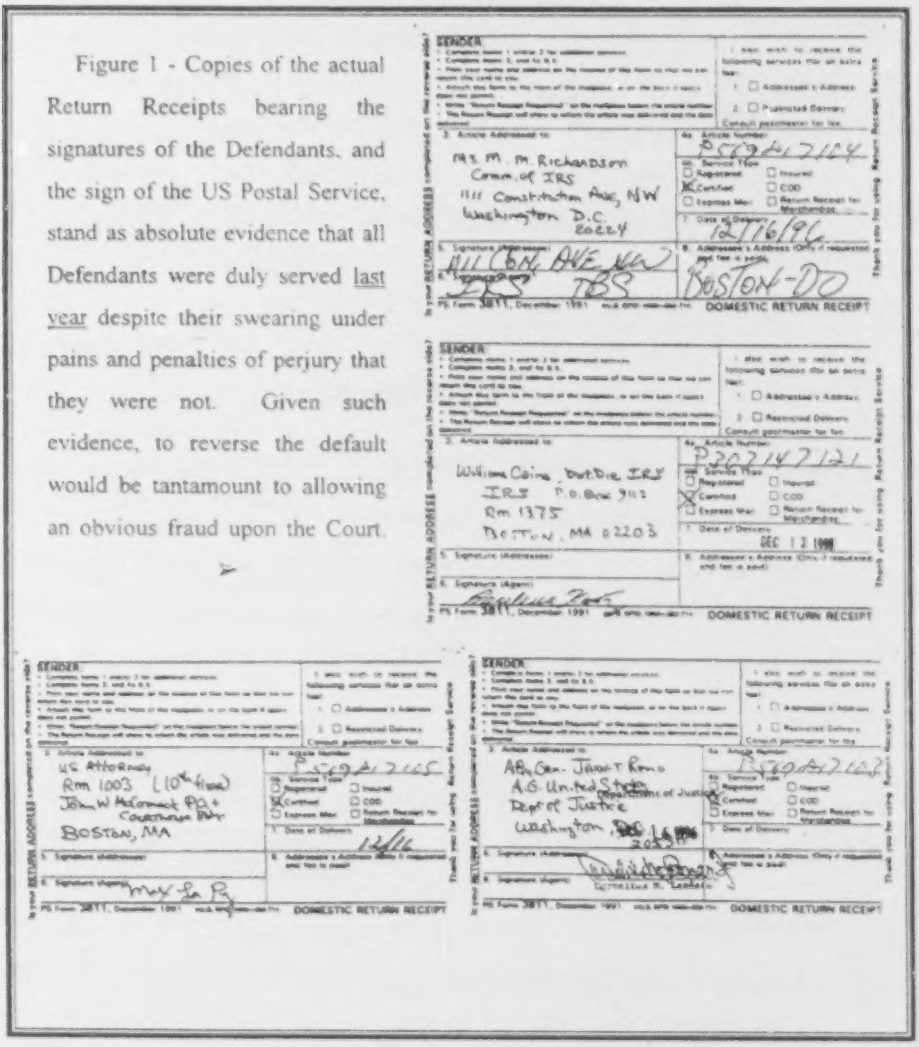
Notice mailed to:

Issuing Court: US District Court
Number of Case: 96-12468-MEL
Date of Entry: 5/5/1997

APPENDIX G

Actual copy of Exhibits in Record demonstrating that despite Defendants' counsels' statements - all of the Defendants were served exactly as the Courts' clerks had directed.

Figure 1 - Copies of the actual Return Receipts bearing the signatures of the Defendants, and the sign of the US Postal Service, stand as absolute evidence that all Defendants were duly served last year despite their swearing under pains and penalties of perjury that they were not. Given such evidence, to reverse the default would be tantamount to allowing an obvious fraud upon the Court.



APPENDIX H

Actual copy of Exhibit in record. Temporary Order of Massachusetts probate Court violated by Judgment. This temporary order also demonstrating that it was "third party" and **not** Petitioner who was "out-of-state".

D

204

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

MIDDLESEX Division

Docket No. 84 D 3670

First Circuit No.

Temporary Orde:

US CT Appeals First Circuit No. 98-105
Temporary Orders of Third Party who is "o
"out of state"
Violations Aided by Defendants (with
Plaintiff Dec.4, 1990)

ANNE MARIE CASAVANT

v.

MITCHELL SWARTZ , Defendant

Pending a hearing on the merits or until further order of the court, it is ordered that:

1) ☐ ~~plaintiff/defendant be and hereby is prohibited from imposing any restraint on the personal liberty of plaintiff/defendant~~

2) ☐ ~~plaintiff/defendant have the care and custody of~~

the minor child of the parties

3) ☐ plaintiff/defendant be given the following visitation right(s):

4) ☐ plaintiff/defendant pay to his/her spouse the sum of forthwith and the further sum of on each and every hereafter, beginning on , for his/her support and that of the minor child .

5) ☐ said payments to be made to the Probation Department and forwarded to the Department of Public Welfare/the plaintiff/defendant/the applicable city or town of

6) ☒ the parties shall comply with a stipulation or agreement of the parties dated DECEMEER 17, 1990 which is filed with the Court and expressly made a part of this order

7) ~~plaintiff/defendant pay reasonable medical, dental and hospital expenses of his/her spouse and minor child and maintain existing medical and hospital insurance~~

8) ☐ ~~plaintiff/defendant vacate the marital home at~~ (Street and No.) (City or Town)

for a period of day(s) commencing on

9) ☒ Except as herein modified, the prior judgment is re-affirmed.

Date December 17, 1990

JUSTICE OF THE PROBATE AND FAMILY COURT

Issuing Court: Massachusetts Probate and Family Court
Number of Case: 84D-3670
Date of Entry: 12/17/1990

APPENDIX I

Actual copy of Exhibit in record. Temporary Order of Massachusetts probate Court violated by Judgment. This temporary order also demonstrating that it was "third party" and **not** Petitioner who was "out-of-state".

203

Commonwealth of Massachusetts
The Trial Court
Middlesex Division — Probate and Family Court Department — Docket No. 84D3670

Temporary Order

US CT Appeals First Circuit No. 98-1
Temporary Orders of Third Party who "out of state"
Violations Aided by Defendants (with Fourth and Fifth Parties May 31, 1991

Allen Swartz and Emma Swartz

v.

Anne Marie Casavant and Mitchell Swartz, Defendant

Pending a hearing on the merits or until further order of the court, it is ordered that:

1) ☐ ~~plaintiff/defendant be and hereby is prohibited from imposing any restraint on the personal liberty of~~ plaintiff/defendant

2) ☐ plaintiff/defendant have the care and custody of _____ the minor child _____ of the parties

3) ☐ plaintiff/defendant be given the following visitation right(s): _____

4) ☐ plaintiff/defendant pay to his/her spouse the sum of _____ forthwith and the further sum of _____ on each and every _____ hereafter, beginning on _____, for his/her support and that of the minor child _____.

5) ☐ said payments to be made to the Probation Department and forwarded to the Department of Public Welfare/the ~~plaintiff/defendant/the applicable city or town of~~ _____

6) ☒ the parties shall comply with a stipulation or agreement of the parties dated May 31, 1991 which is filed with the Court and expressly made a part of this order

7) plaintiff/defendant pay reasonable medical, dental and hospital expenses of his/her spouse and minor child _____ and maintain existing medical and hospital insurance

8) ☐ plaintiff/defendant vacate the marital home at _____ (Street and No.) (City or Town) (Zip) for a period of _____ day(s) commencing on _____

9) ☐ _____

Date May 31, 1991

Vincent E. Leibig
JUSTICE OF THE PROBATE AND FAMILY COURT

Issuing Court: Massachusetts Probate and Family Court
Number of Case: 84D-3670-GP1
Date of Entry: 5/31/1991

APPENDIX J

Actual copy of the Order of California probate Court violated by Judgment. This order also demonstrates that it was "third party" and **not** Petitioner who was "out-of-state". This order returned the case to Massachusetts for "lack of jurisdiction (in California)"

US CT Appeals First Circuit No. 98-10
Order From California Demanding
Return to Massachusetts
Violated by Defendants
3/15/1994, Page Addendum A14

~~SUPERIOR COURT OF THE STATE OF CALIFORNIA~~

SEQ NO 38

MINUTE ORDE

CALENDAR 318 CHANGE NAME
DEPT 703 CONVENED AT 2:00 PM MARCH 23, 1994

JUDGE: WOOLLEY, ~~JOHN C~~ ROBINSON J DEP CLK: PABITZKY, ~~LESLIE CASPER~~
~~BAILIFF: DAVIDSON, J-DANIELS~~ REPORTER: VIDEO.
CASE CATEGORY: PROB CHANGE OF NAME
CONSOLIDATED CASE NUMBERS:

CASE: A171792 SWARTZ-NAME
MATTER: 01 MINJ18 N.O. CHANGE NAME
REF FILINGS 03/31/94 01
REF PROC 03/15/94 01
PETITIONER SWARTZ, DAVID NATHAN CASAVANT
APPEARANCES
~~RESPONDENT~~ 4 ODC CARNEY, ANNE MARIE CASAVANT
(X) REPRESENTED BY PRO PER

(X) PARTIES ADVISED MATTER IS BE HEARD BY ~~COMMISSIONER~~ JUDGE ROBINSON AS TEMPORARY JUDGE. NO OBJECTION STATED. ALL PARTIES DEEMED TO HAVE SO STIPULATED.
( ) STIPULATION FOR TEMPORARY JUDGE SIGNED THIS DATE.

( ) PETITION GRANTED AS ( ) AMENDED. ( ) SUPPLEMENTED. ( ) AMENDED.
(X) PETITION ~~DENIED~~ ( ) DISMISSED ( ) WITH/WITHOUT PREJUDICE. for lack of jurisdiction
( ) AT REQUEST OF ATTORNEY FOR PETITIONER ( ) ON THE COURT'S MOTION:
( ) ORDERED OFF CALENDAR ( ) WITH/WITHOUT PREJUDICE
( ) ORDERED CONTINUED TO _____, 19__, AT _____ M. IN DEPT_____.

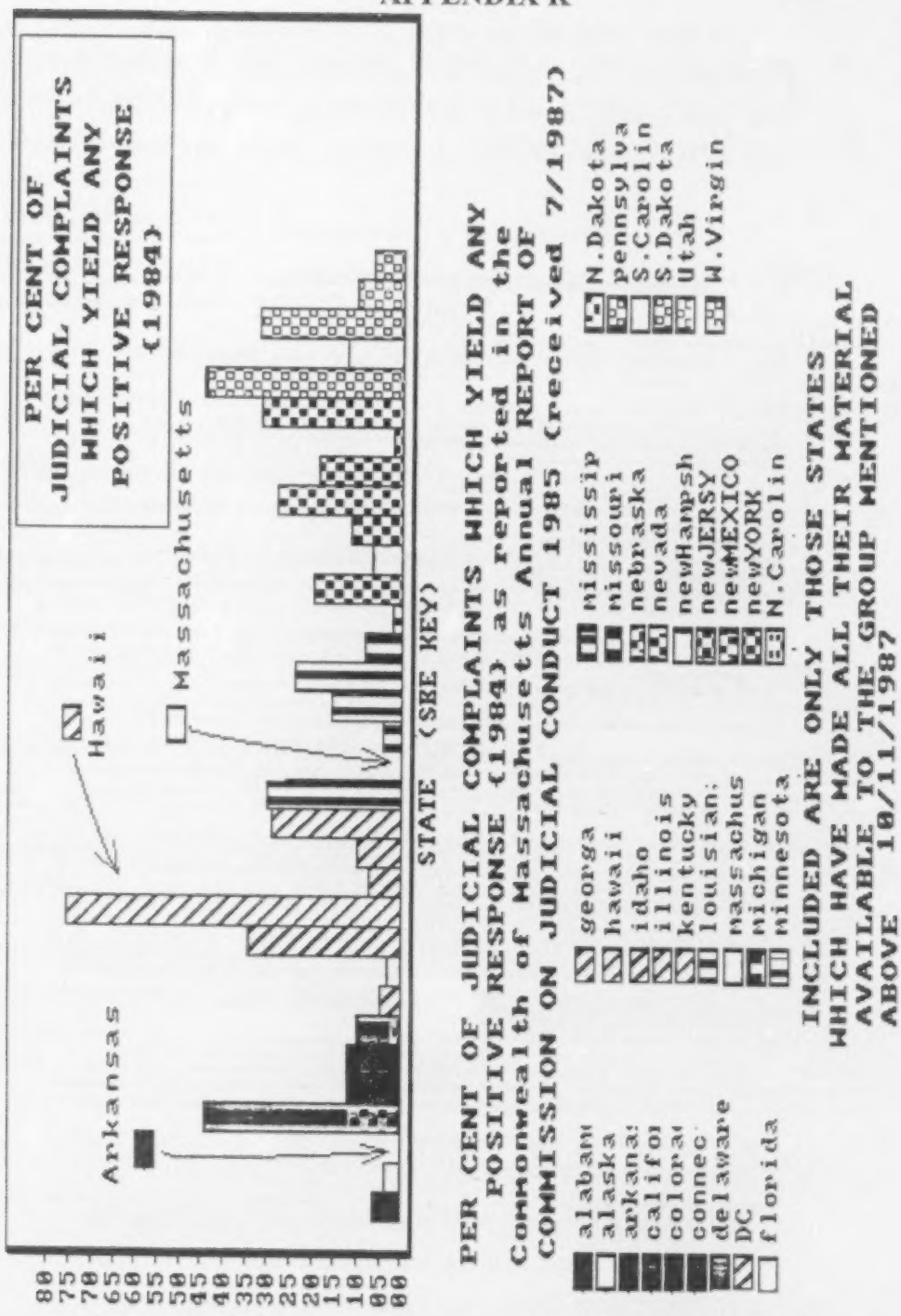
( ) NO FURTHER CONTINUANCE WITHOUT APPEARANCE. IF NO APPEARANCE AT NEXT HEARING AND NOT RECOMMENDED FOR APPROVAL, MATTER WILL GO OFF CALENDAR.
( ) COPY OF MINUTE ORDER MAILED TO ATTORNEY/PETITIONER THIS DATE
( ) MAYBE PRE-APPROVED IF ( ) PROOF OF NEWSPAPER PUBLICATION OF OSC RECEIVED.
( ) NON-PETITIONING PARENT SERVED ( ) BIRTH CERTIFICATE STATES NAME: _____
( ) PETITIONER/S IDENTIFICATION SHOWS NAME/S: ( ) SAME AS PETITION
( ) _____
( ) CHILDS BIRTH CERTIFICATE SHOWS PARENTS NAMES: ( ) SAME AS PETITION
( ) _____
( ) AMENDED/NEW ORDER TO SHOW CAUSE TO ISSUE IF NECESSARY.
( ) PETITION VERIFIED/SIGNED IN OPEN COURT.
( ) COURT FINDS SUFFICIENT NOTICE TO _____.
( ) COURT FINDS ALL NOTICE/PUBLICATION GIVEN AS REQUIRED BY LAW.
( ) COURT FINDS CHANGE OF NAME IS IN THE BEST INTEREST OF THE MINOR.
( ) MATTER REFERRED TO MEDIATION/INVESTIGATION FOR MEDIATION AND REPORT.
( ) PETITIONER SWORN AND TESTIFIED ( ) NAME CHANGE QUESTIONS ANSWERED.

(X) Objection Sustained

CLERK III-MINJ18 ENTERED: MARCH 23, 1994

Issuing Court: California Probate and Family Court
Number of Case: A171792
Date of Entry: 3/15/1994

APPENDIX K


PER CENT OF JUDICIAL COMPLAINTS WHICH YIELD ANY POSITIVE RESPONSE (1984)
Hawaii
Massachusetts
Arkansas
-%- per cent
80 75 70 65 60 55 50 45 40 35 30 25 20 15 10 05 00
STATE (SEE KEY)
PER CENT OF JUDICIAL COMPLAINTS WHICH YIELD ANY POSITIVE RESPONSE (1984) as reported in the Commonwealth of Massachusetts Annual REPORT OF COMMISSION ON JUDICIAL CONDUCT 1985 (received 7/1987)
alabam georga mississip N.Dakota
alaska hawaii missouri pennsylva
arkansa idaho nebraska S.Carolin
califor illinois nevada S.Dakota
colorad kentucky newHampsh Utah
connec louisian: newJERSY W.Virgin
delaware massachus newMEXICO
DC michigan newYORK
florida minnesota N.Carolin
INCLUDED ARE ONLY THOSE STATES WHICH HAVE MADE ALL THEIR MATERIAL AVAILABLE TO THE GROUP MENTIONED ABOVE 10/11/1987

Work product of Petitioner Examining Judiciary presented to Massachusetts Gender Bias Commission demonstrating apparent relative lack of response to complaints in both Arkansas and Massachusetts compared to the rest of the United States.

Supreme Court, U.S.
FILED
MAY 18 1999
CLERK

(2)

No. 98-1324

In the Supreme Court of the United States

MITCHELL SWARTZ, PETITIONER

v.

INTERNAL REVENUE SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record
LORETTA C. ARGRETT
Assistant Attorney General
ANN B. DURNEY
JOHN A. NOLET
Attorneys
Department of Justice
Washington, D.C. 20530-2217
(202) 514-2217

1428

QUESTION PRESENTED

Whether an action may be brought against the Internal Revenue Service to contest the agency's remittance of petitioner's federal income tax overpayments to the State of California for past-due child support obligations, pursuant to Section 6402(c) of the Internal Revenue Code, 26 U.S.C. 6402(c).

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	4
Conclusion	11

TABLE OF AUTHORITIES

Cases:

Anderson v. *White*, 888 F.2d 985 (3d Cir. 1989)	5, 7, 10
Bob Jones Univ. v. *Simon*, 416 U.S. 725 (1974)	8
Clinton County Comm'rs v. *United States Envtl. Protection Agency*, 116 F.3d 1018 (3d Cir. 1997), cert. denied, 522 U.S. 1045 (1998)	8
Enochs v. *Williams Packing & Navigation Co.*, 370 U.S. 1 (1962)	8
Flora v. *United States*, 362 U.S. 145 (1960)	9
Gonsalves v. *Internal Revenue Serv.*, 975 F.2d 13 (1st Cir. 1992)	10
Hughes v. *United States*, 953 F.2d 531 (9th Cir. 1992)	8
Larsen v. *Larsen*, 671 F. Supp. 718 (D. Utah 1987), aff'd, 871 F.2d 1095 (10th Cir.), cert. denied, 493 U.S. 844 (1989)	7
Lonsdale v. *United States*, 919 F.2d 1440 (10th Cir. 1990)	8
Oatman v. *Department of Treasury-IRS*, 34 F.3d 787 (9th Cir. 1994)	7
Vennes v. *An Unknown Number of Unidentified Agents*, 26 F.3d 1448 (8th Cir. 1994), cert. denied, 513 U.S. 1076 (1995)	10

Statutes and rule: Page

Anti-Injunction Act , 26 U.S.C. 7421(a) (Supp. III 1997) 4, 8
Balanced Budget Act of 1997, Pub. L. No. 105-33, § 5514(a)(1), 111 Stat. 620 2
Internal Revenue Code (26 U.S.C.):
§ 6402 (1994 & Supp. III 1997) 8
§ 6402(c) 2, 4, 7, 9, 10
§ 6402(e) (Supp. III 1997) 2, 3, 4, 5, 7, 9
§ 6402(f) (Supp. II 1996) 2
§ 7433(a) 4, 9, 10
§ 7433(a) (1988) 10
Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3102(a)(1)(A), 112 Stat. 730 10
28 U.S.C. 1331 8
Fed. R. Civ. P. 55(e) 4, 5

In the Supreme Court of the United States

No. 98-1324

MITCHELL SWARTZ, PETITIONER

v.

INTERNAL REVENUE SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is unofficially reported at 82 A.F.T.R.2d (RIA) 98-6797. The opinion of the district court is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 1998. A petition for rehearing was denied on November 20, 1998 (Pet. App. B). The petition for a writ of certiorari was filed on February 18, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner overpaid his federal income taxes for 1989 and 1991 in the amounts of $11,245 and $1,954, respectively. Instead of refunding these overpayments

to petitioner or applying them as a credit against his taxes due for other years, the Internal Revenue Service paid them to the Orange County, California, District Attorney's Office, Child Support Enforcement Division. This was done at the request of the California authorities, pursuant to Section 6402(c) of the Internal Revenue Code, 26 U.S.C. 6402(c), to satisfy a portion of petitioner's past-due child support obligations (A. ¶¶ 20-21, 24, at 14; A. ¶ 39, at 17; A. 76-77).[1] That statute provides a mechanism for States to notify the Secretary of the Treasury of past-due support obligations and directs the Secretary to "remit the amount" of an overpayment "to the State * * * and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State." 26 U.S.C. 6402(c). The statute further specifies that (26 U.S.C. 6402(e) (Supp. III 1997)):[2]

> No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c) * * * . No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax.

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[1] "A." references are to the record appendix filed in the court of appeals. "Add." references are to the addendum attached to taxpayer's opening brief filed in the court of appeals.

[2] At the time this case arose, this provision was located at 26 U.S.C. 6402(f) (Supp. II 1996). Subsection (f) was redesignated as subsection (e) by the Balanced Budget Act of 1997, Pub. L. No. 105-33, § 5514(a)(1), 111 Stat. 620, effective July 1, 1997.

2. Notwithstanding this express limitation on the jurisdiction of the federal courts to "restrain or review a reduction authorized by [Section 6402(c)]" (26 U.S.C. 6402(e) (Supp. III 1997)), petitioner filed this action against the Internal Revenue Service and its Commissioner and a District Director to challenge the transfer of his tax overpayment to the California authorities. He asserted in his complaint that he did not owe unpaid child support, that by intercepting his tax refunds the Internal Revenue Service had violated his civil rights, and that by not providing him with notice and a hearing before transferring his tax overpayments the Service had violated his right to due process. Petitioner asked for "a return of the money, with interest, including reasonable litigation costs, and legal fees," and monetary damages for "unreasonable actions taken by the IRS employees" and for "unethical pain and suffering" (A. 19). He also sought various forms of injunctive relief, including the "removal of all other improper fees, fines, penalties, and levies" and an order enjoining the IRS "from all present harassment, summons, and levies" (*ibid.*).

3. The government did not file a timely answer to the complaint and, on petitioner's motion, the district court issued a notice of default (A. 22). The United States moved to set aside the default (Add. xvi) and to dismiss the complaint (Add. xix). Petitioner then moved to enjoin enforcement of the various liens, levies and summonses that the Service had issued in an effort to obtain collection of the 1990 and 1992 taxes owed by petitioner (Add. xi, xii, xiv). Petitioner alleged that these collection actions were taken to harass him in retaliation for the filing of his suit.

The district court issued an order setting aside the default and granting the government's motion to dis-

miss this case for lack of subject matter jurisdiction. The court concluded that (what is now) 26 U.S.C. 6402(e) (Supp. III 1997) expressly precludes petitioner from proceeding in federal court to challenge the transfer of his tax overpayments to California under Section 6402(c).

4. The court of appeals affirmed (Pet. App. A). The court of appeals concluded that the district court had correctly set aside the entry of default against the government because petitioner did not "establish a claim or right to relief" as required by Rule 55(e) of the Federal Rules of Civil Procedure. The court also agreed with the district court that petitioner's effort to challenge the remittance of his tax overpayments for 1989 and 1991 to California under Section 6402(c) is barred by the plain text of (what is now) 26 U.S.C. 6402(e) (Supp. III 1997).

The court further held that petitioner's claim for damages for collection activities for the 1990 and 1992 tax years failed to show—as 26 U.S.C. 7433(a) requires —that the challenged collection activities were taken with a reckless or intentional disregard of the internal revenue laws. The court noted that petitioner's request for injunctive relief against these tax collection actions was, in any event, barred by the Anti-Injunction Act, 26 U.S.C. 7421(a) (Supp. III 1997). Finally, the court concluded that petitioner's claim for a refund of an overpayment of taxes was barred because he had not satisfied the jurisdictional prerequisite of a timely administrative claim for refund.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of

any other court of appeals. Further review is therefore not warranted.

1. Petitioner errs in contending (Pet. 24-25) that the entry of default against the government should not have been set aside. As the court of appeals explained (Pet. App. A), Rule 55(e) of the Federal Rules of Civil Procedure precludes a default judgment against the United States and its agencies and officers "unless the claimant establishes a claim or right to relief by evidence satisfactory to the court." Fed. R. Civ. P. 55(e). Petitioner did not establish a claim or right to relief. To the contrary, petitioner's contention that the courts should review and set aside the Commissioner's determination that petitioner's overpayments were to be remitted to California to pay overdue child support was barred by the plain text of 26 U.S.C. 6402(e) (Supp. III 1997).

2. Petitioner's tax overpayments were remitted to California under what is known as the tax refund intercept program (TRIP). The mechanics of that program have been described in detail in *Anderson* v. *White*, 888 F.2d 985, 988-989 (3d Cir. 1989):

> TRIP procedures begin when the local agency identifies a parent who is past-due in his or her child support in welfare cases by $150 or more, and in non-welfare cases by $500 or more. 45 C.F.R. § 303.72. The local agency submits the name and social security number of the delinquent parent to the state bureau. It then relays the data to the United States Department of Health and Human Services, Office of Child Support Enforcement (federal office). *Id.* The federal office then forwards this information to the IRS, and it checks to see whether the parent is entitled to a tax refund. If a

tax refund is due, the IRS intercepts the refund and begins the process of having this money refunded to the state. 26 C.F.R. § 301.6402-5. Normally the interception process is not completed until after the parent said to owe support has been given an opportunity to contest that fact in local administrative proceedings. Indeed, the TRIP statute and regulations require that he or she be sent a pre-offset notice before a parent's tax refund is actually intercepted and applied to his or her child support obligation. *See* 42 U.S.C.A. §664(a)(3)(A); 42 C.F.R. § 303.72(e). If the parent makes no objection or if the objections are finally dismissed, the tax refund is sent to the local agency for application against the taxpayer's delinquent support obligation.

Under the federal statute and regulations, the pre-offset notice must inform the parent that his or her tax refund may be withheld to pay delinquent court-ordered child support. It must also inform the parent of the right to obtain administrative review through the local agency. * * *

* * * * *

If the local agency determines that a modification or deletion is warranted after administrative review, it submits the appropriate information to the state bureau, which in turn forwards it to the federal office. 45 C.F.R. §§ 303.72(d)(2), (f)(3), (g)(4). The federal office then contacts the IRS, and the intercept order is changed. If the individual's tax return has not yet been processed, an intercept will be avoided. If, on the other hand, an inappropriate intercept has already occurred, the refund due to the individual is restored. *Id.* § 303.72(h)(4).

It is in this context that Congress specified that federal courts are not to exercise jurisdiction over "any action, whether legal or equitable, brought to restrain or review a reduction authorized by [Section 6402(c)]" that remits tax overpayments to state authorities for delinquent child support. 26 U.S.C. 6402(e) (Supp. III 1997). Under Section 6402(c), the IRS was required, upon certification by the State of California that taxpayer had past-due child support obligations, to reduce any refund or credit due taxpayer as needed to offset those obligations, and to remit that amount to California. Federal courts are barred from reviewing that action by Section 6402(e). Petitioner's remedy is to obtain review of the asserted delinquency through the applicable state administrative or judicial process. *Anderson* v. *White*, 888 F.2d at 988-989. Petitioner's contention (Pet. 19-20) that he did not owe the child support demanded by California is thus a matter for him to resolve with the California authorities.

There is no conflict among the circuits concerning the proper interpretation of the plain language of Section 6402(e). The courts have consistently held that the statute bars federal court review of overpayment transfers made pursuant to Section 6402(c). See Pet. App. A; *Larsen* v. *Larsen*, 671 F. Supp. 718, 719-720 (D. Utah 1987), aff'd, 871 F.2d 1095 (10th Cir.), cert. denied, 493 U.S. 844 (1989). Cf. *Oatman* v. *Department of Treasury-IRS*, 34 F.3d 787, 788 (9th Cir. 1994) (acknowledging that Section 6402(e) bars federal court jurisdiction to review an overpayment reduction made under Section 6402(c) with respect to a taxpayer obligated to pay child support, but holding that the

taxpayer's spouse could seek to recover her share of an intercepted overpayment reported on a joint return).[3]

3. Petitioner's effort to enjoin the IRS from using liens, levies and summonses to collect his 1990 and 1992 taxes is similarly barred by the express terms of the Anti-Injunction Act, 26 U.S.C. 7421(a) (Supp. III 1997). That statute specifies that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." *Ibid.*; see *Bob Jones Univ.* v. *Simon*, 416 U.S. 725, 736 (1974). The judicial exception to the Anti-Injunction Act articulated by this Court in *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. 1 (1962), does not apply to this case, for petitioner has not established that "under no circumstances could the Government ultimately prevail" on the merits of his assessed liability for unpaid taxes for 1990 and 1992 (*id.* at 7).

Petitioner nonetheless contends that he has not received proper credit for tax payments that he has made (Pet. 13-15, 17, 22-24).[4] The declaration of petitioner's

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[3] None of the other provisions cited by petitioner (Pet. 4-5) authorizes this action to proceed against the United States in the face of the express statutory prohibition against federal court jurisdiction over the review of overpayment reductions made under Section 6402. Moreover, none of these provisions waives the government's immunity from suit. See, *e.g.*, *Clinton County Comm'rs* v. *United States Envtl. Protection Agency*, 116 F.3d 1018, 1021 (3d Cir. 1997) (general jurisdictional provisions such as 28 U.S.C. 1331 do not waive the government's sovereign immunity), cert. denied, 522 U.S. 1045 (1998); *Hughes* v. *United States*, 953 F.2d 531, 539 n.5 (9th Cir. 1992) (same); *Lonsdale* v. *United States*, 919 F.2d 1440, 1444 (10th Cir. 1990) (same).

[4] Petitioner ascribes particular significance to two checks that he sent to the IRS (Pet. App. C), but these checks demonstrate only that on April 15, 1990, taxpayer made payments of $8,000 and $6,000 to the IRS. The record does not identify the tax period for

accountant (Pet. App. E) states that overpayments of taxes for 1989 and 1991 in the amounts of $11,245 and $1,954, respectively, were not credited against petitioner's 1990 and 1992 tax liabilities. Those, of course, are the very overpayment credits that were withheld and transferred to California pursuant to Section 6402(c).[5] See pp. 1-2, *supra*. In denying jurisdiction to federal courts to review such "a reduction authorized by [Section 6402(c)]," the statute further specifies that "[n]o action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax." 26 U.S.C. 6402(e) (Supp. III 1997). Petitioner's effort to recast his claim for review of a child-support reduction under Section 6402(c) as a "suit for refund of tax" was thus anticipated, and precluded, by Congress in enacting this statute.

Moreover, as the court of appeals correctly stated (Pet. App. A), even if a tax refund suit were permissible in this context, petitioner could not bring such a suit because he has not established that he has satisfied the jurisdictional prerequisites of paying the assessed taxes in full and filing a timely administrative claim for refund. See *Flora* v. *United States*, 362 U.S. 145 (1960).

4. The court of appeals also correctly concluded (Pet. App. A) that petitioner has failed to satisfy the requirements for a claim for damages under 26 U.S.C. 7433(a) in contending that the agency engaged in improper

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which the payments were made or whether credit was given for those payments.

[5] The agency records that petitioner cites to corroborate his claim that he did not receive proper credit for payments of taxes (Pet. App. D) are simply notices of his overpayments for 1989 and 1991, which were intercepted and transmitted to the California authorities.

activities in collecting his outstanding tax obligations for 1990 and 1992. That statute provides a damages remedy against the United States for any action to collect a federal tax that "recklessly or intentionally disregards" the internal revenue laws or regulations. 26 U.S.C. 7433(a); *Gonsalves* v. *Internal Revenue Service*, 975 F.2d 13, 15 (1st Cir. 1992); *Vennes* v. *An Unknown Number of Unidentified Agents*, 26 F.3d 1448, 1454 (8th Cir. 1994), cert. denied, 513 U.S. 1076 (1995).[6] Petitioner failed, however, to allege that, in taking the actions complained of, the agency or its employees "recklessly or intentionally" disregarded the internal revenue laws (26 U.S.C. 7433(a) (1988)). Because this statutory requirement was not met, the court of appeals correctly concluded (Pet App. A) that petitioner failed to state a claim for relief.[7] See *Gonsalves* v. *Internal Revenue Service*, 975 F.2d at 15-16. Moreover, the agency's compliance with the requirements of Section 6402(c)—by remitting petitioner's overpayments to California upon the State's

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[6] Petitioner based his claim for damages on his allegation that the IRS had violated his civil rights by intercepting his tax refunds and had denied him due process by transferring the overpayments to California without affording him notice and a hearing. The assertion that the TRIP program deprives federal taxpayers of due process of law was fully addressed, and correctly rejected, in *Anderson* v. *White*, 888 F.2d at 991-995.

[7] Section 7433(a) was amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3102(a)(1)(A), 112 Stat. 730. As amended, Section 7433(a) allows a wrongful collection action against the United States if IRS employees disregard any provision of the internal revenue laws "recklessly or intentionally, *or by reason of negligence*." *Ibid.* (emphasis added). The amendment applies to actions of IRS employees occurring after July 22, 1998, and is not applicable to the instant lawsuit.

certification that taxpayer had past-due child support obligations—was manifestly not in "reckless" or "intentional" disregard of the internal revenue laws.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General
LORETTA C. ARGRETT
Assistant Attorney General
ANN B. DURNEY
JOHN A. NOLET
Attorneys

MAY 1999

Supreme Court, U.S.
FILED
MAY 28 1999
CLERK

(3)

No. 98-1324

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1998

MITCHELL SWARTZ - PETITIONER

vs.

INTERNAL REVENUE SERVICE, - RESPONDENTS
MARGARET M. RICHARDSON, COMMISSIONER (ret.),
CHARLES O. ROSSOTTI, COMMISSIONER
WILLIAM CAINE, DISTRICT DIRECTOR,
LAURA MARTIN, THOMAS LOUGHRIN,
PETER BOUSNAKIS, PETER SORENTINO,
STEPHEN DAIGE, ROBERT CHAPUT, ALL INDIVIDUALLY
AND AS OFFICERS

May 27, 1999

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

12 pp

SUPREME COURT OF THE UNITED STATES

Typographic Corrections To "Reply"

Page 4, line 30, delete 2nd word "California"

Page 8, line 15, 5th word is "committed"

Page 9, line 3, 4th word is "that"

Page 9, line 26, 6,7th words are "controlling authority"

TABLE OF CONTENTS

Petitioner's Reply To Brief In Opposition	Page
Table Of Contents	i
Table Of Authorities Cited	ii
Respondents Finally Admit Petitioner Paid On Time	1
Respondents Tardive Admission Indicates Petitioner Does Have A Right To Relief	2
Petitioner Did Not Seek A Reduction In Taxes	2
The Liens, Levies And Summons Were For Taxes Already Paid	2
Child Support Was Paid	3
Retaliation Is Obvious Since Respondents Finally Admit That Petitioner Paid His Taxes	4
26 U.S.C. §6402 Is Inappropriate	4
Massachusetts Has Sole Jurisdiction	5
There Was No Authority And No Jurisdiction	5
The Complaint Involved More Than Simple Transfer Of An Inapplicable Law Used Without Authority	6
The Defendants Took Much More Than Two Checks	6
The Defendants Acted Recklessly And Intentionally	7
Federal Law Is The Controlling Authority	7
Petitioner Satisfied The Anti-Injunction Act	8
Ignoring Court Orders From Two States Is An Obvious Civil Rights Violation	9
Certificate Of Service, Certificate Of Mailing	10

Table Of Authorities Cited

Anderson v. White, 888 F.2d at 991-995	9
Anti-Injunction Act, 26 U.S.C. 7421(a) (Supp. III 1997)	2,8,9
Commissioner v. Shapiro, 424 U.S. 614, 628 n.10 (1976)]	2
Enochs v. Williams Packing & Navigation Co.. Inc., 370 U.S. 1 (1962)	9
Flora v. U.S., 362 U.S. 145 (1960)	9
Gamez v. Toledo, 100 S. Ct. 1920	10
Green v. Elgie, 5 Q.S. 99, 1843].	2
Griswold v. Connecticut, 85 S.Ct. 1678	10
Griswold, v. USA	8
Internal Revenue Code Section 7430	8
Miklautsch v. Comm, No. A89-291	8
People v. Pierce, 66 Cal. 2d 53 (1967)].	1
Revenue Ruling 79-284	5
Revenue Ruling 73- 305	5
Lucy Cameron v. INTERNAL REVENUE SERVICE, United States District Court for the Middle District of Pennsylvania D.C. Civil Action No. 90-02141)	5
US v. Pepperman, 976 F.2d 123, 127 (3d Cir. 1992)	5
Frontiero v. Richardson, 93 S.Ct. 1736, 411 U.S. 677	10
Weiss v. Weiss, 436 N.Y.S. 2d. 862, 52 N.Y. 2d. 170 (1981)	10

1. The Petitioner submits this Reply Brief because Respondent's "*Brief in Opposition*" has a number of omissions, misstatements of fact contradicted by evidence in the record, and attempts to minimize and change the issues, while attacking the Petitioner's character with false statements. This case is not about post-divorce matters, but is about a Federal agency run amuck ignoring both Court orders and true authority, thereby depriving Petitioner of Constitutionally-protected due process.

2. Respondent's "*Brief in Opposition*" omits that sole jurisdiction for Plaintiff's divorce case, was, and remains, in the Commonwealth of Massachusetts as Defendants were informed more than seven years ago. It also conveniently omits that an Orange County Family Court Judge cited the lack of jurisdiction in California (Exhibit 10).

Respondents Finally Admit Petitioner Paid On Time

3. Petitioner thanks Respondents for finally admitting, *"Petitioner overpaid his federal income taxes for 1989 and 1991 in the amounts of $11,245 and $1,954, respectively"*. This key admission is significant because, by stating at last what the Petitioner has said all along, it confirms that jurisdictional prerequisites have been met. The tardive admission is reprehensible because had it been stated earlier, the outcome, implications, and relevant laws would have been different, and there would have been resolution of some of the issues. Defendants have essentially said that they have repeatedly misrepresented facts upon Federal documents and have given false testimony in a proceeding which has had bearing upon said proceeding [People v. Pierce, 66 Cal. 2d 53 (1967)]. In this case, Petitioner's cashed checks were ignored with no fair accounting. Timely overpayments were ignored, and more assets were seized. Just because Defendants transferred Petitioner's overpayments, does not mean that Petitioner did not pay. Petititioner did; corroborated by the tardive admission by Respondents. Yet, at least three (3) times, the Defendants knowingly participated in the preparation or execution of at least one bad warrant (court paper) for ulterior purposes and/or wrongful motives [Green v. Elgie, 5 Q.S. 99, 1843].

Respondents Tardive Admission Indicates Petitioner Does Have A Right To Relief

4. The Respondents claim, *"Petitioner did not establish a claim or right to relief."* However, at the time of the Default, the court already found, pursuant to Rule 55(e) of the Federal Rules of Civil Procedure, that Petitioner had a claim or right to relief by evidence satisfactory to the court, and now Respondents - albeit quite late - have at last admitted that Petitioner fully paid [Commissioner v. Shapiro, 424 U.S. 614, 628 n.10 (1976)]. Most importantly, the Respondents tardive admission, at variance with their claims previously in Federal Court, demonstrates saliently that plaintiff has shown that the government cannot prevail on the merits.

Petitioner Did Not Seek A Reduction In Taxes

5. The Respondents claim, *"No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c)".*

However, the implication is false. Petitioner did not seek to reduce his taxes, but only to get credit for his taxes which were paid on time, filed with the correct administrative forms. Respondents have falsely stated that Petitioner did not pay his taxes, and then they falsely stated Petitioner sought a reduction in taxes. Both were knowingly false; Respondents continue to backpedal.

The Liens, Levies And Summons Were For Taxes Already Paid

6. The Respondents claim, *"Petitioner's effort to enjoin the IRS from using liens, levies and summonses to collect his 1990 and 1992 taxes is similarly barred by the express terms of the Anti-Injunction Act, 26 U.S.C. 7421(a) (Supp. III 1997). That statute specifies that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person."*

Respondents finally admit Petitioner paid his taxes, so it is obvious that the Defendants had no right to recollect the same taxes, repeatedly through seizures of various accounts and overpayments. Second, the levies and summons were made without the mandatory required signature of District Director matching the typed name below it as

required. Thus a pattern of lawlessness and violations of civil rights was created by the Defendants.

Child Support Was Paid Despite The Innuendo

7. The Respondents falsely claim, *"Instead of refunding these overpayments to petitioner or applying them as a credit against his taxes due for other years, the Internal Revenue Service paid them to the Orange County, California, District Attorney's Office, Child Support Enforcement Division. This was done at the request of the California authorities, pursuant to Section 6402(c) of the Internal Revenue Code, 26 U.S.C. 6402(c), to satisfy a portion of petitioner's past-due child support obligations".*

This allegation is untrue for three (3) reasons. Respondents continue to falsely state there was purported child support due thereby impugning the Petitioner who has regularly been sending child support checks each and every month and did not owe child support (Exhibits 1,2 4,5; Appendix 12). There was, and is, no past-due child support obligation. The false statement by Respondents stands contradicted by unrebutted verified Declarations, the unanswered original Complaint [Appendix 363-377, 378-383, 384, 385, Addenda A4, A5], signed agreements [Addenda A8-A11], and Court orders from two states [Addenda A1-A3]. Second, perhaps most importantly, there has never been controlling authority in California. The state having control was, and is, Massachusetts based upon Court orders by the two states, but conveniently ignored by the Respondents. There has never been a California Divorce, or a California action except to return the case to Massachusetts. The only lawful California order confirms that the Plaintiff's case has Massachusetts jurisdiction.

Third, there has been a coverup by the Defendants for years. As California's collection office has stated -also ignored by Respondents-, **"Correspondence in the file indicates that (the third party) requested that this matter be closed by letter dated December 18, 1995"**. Defendants arrogantly and recklessly ignored the law, Court orders from two (2) states, Congressional orders and inquiry, and even the request by the third party to stop collecting the money.

Retaliation Is Obvious Since Respondents Finally Admit That Petitioner Paid His Taxes

8. The Respondents claim, *"Petitioner then moved to enjoin enforcement of the various liens, levies and summonses that the Service had issued in an effort to obtain collection of the 1990 and 1992 taxes owed by petitioner (Add. xi, xii, xiv). Petitioner alleged that these collection actions were taken to harass him in retaliation for the filing of his suit."*.

This was harassment because Respondents have finally, reversed some of their previous intentionally false statements, and have admitted Petitioner did pay. Harassment is confirmed because Defendants systematically and unethically and unlawfully took -- and then took again -- assets for "taxes" already paid. The seizures included labeled child support bank accounts which are prohibited by Congress from such seizure.

26 U.S.C. §6402 Is Inappropriate

9. The Respondents falsely claim, *"There is no conflict among the circuits concerning the proper interpretation of the plain language of Section 6402(c)."*

There are six problems because §6402 is not relevant. Respondents ignore that they are not permitted to apply 6402(c) pursuant to the governing provisions of 42 U.S.C. §664 (a), 26 U.S.C. § 6402, 651, 652, 667, and 1307 [Addenda A4 and A5 and Sec. 667; Appendix 290-295, 299-308)]. First, Sec. 651 deals with obligators who flee the state (Appendix 288), but is ignored by the Defendants, because it states that it cannot apply to the Plaintiff because Plaintiff did not leave his state (i.e. Massachusetts; Addenda A1-A3, A8, A10). It was the third party that left the state exploiting temporary orders (Addenda A12, A13, cf. Appendix 12, 204-290. All issues were remanded back to Massachusetts California (Exhibit 3; Addendum A14). Second, given Sec 667 and Exhibit 5, these statutes cannot be used against the Plaintiff (Exhibits 1-5, Appendix 279, 287, 288). Third, §6402 is not relevant because the applicable period of limitation was over. Fourth, §6402 is not relevant because there was no acceptance by Plaintiff. He informed Defendants exactly how to allocate said overpayments (Exhibits 19, 28), and the Courts have considered this issue of allocation [Revenue Ruling

73-305 or 79-284. United States v. Pepperman, 976 F.2d 123, 127 (3d Cir. 1992; Lucy Cameron v. IRS (D.C. Civil Action No. 90-02141)]. Fifth, Plaintiff did and does not owe any money. Sixth, fraud or error has been simply ignored by the Defendants who were notified. The Defendants were negligent (Appendix 290; Sec. 1307) to willfully ignore those facts; instead wrongly maliging the Petitioner.

Massachusetts Has Sole Jurisdiction

10. The Respondents falsely claim, *"Petitioner's tax overpayments were remitted to California under what is known as the tax refund intercept program (TRIP)....The local agency submits the name and social security number of the delinquent parent to the state bureau."*

Respondents conveniently ignore that the Massachusetts court system has sole jurisdiction based on law, stipulation, Agreement, and Court orders in two (2) states -- Massachusetts and California. An Orange County Family Court Judge, whom Petitioner's ex-wife appeared in front of regarding an attempt to change the child's last name to her new husband's name -- against Massachusetts Orders, and against the Stipulation -- denied her Motion citing the lack of jurisdiction in California.

There Was No Authority And No Jurisdiction

11. The Respondents falsely claim, *"That statute provides a mechanism for States to notify the Secretary of the Treasury of past-due support obligations and directs the Secretary to "remit the amount" of an overpayment "to the State and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State." 26 U.S.C. 6402(c)".*

This allegation is not relevant because California was not the correct state based upon Court Orders from both California and Massachusetts. There never was any legal authority in California. There was, and is, no "past support obligation". Not one single proper piece of paper was filed in any Probate Court except where the California Court decided that jurisdiction was to remain in the Commonwealth of Massachusetts (Addendum A1).

The Complaint Involved More Than Simple Transfer Of An Inapplicable Law Used Without Authority

12. The Respondents claim, *"The district court issued an order setting aside the default and granting the government's motion to dismiss this case for lack of subject matter jurisdiction. The court concluded that (what is now) 26 U.S.C. 6402(e) (Supp. III 1997) expressly precludes petitioner from proceeding in federal court to challenge the transfer of his tax overpayments to California under Section 6402(c)".*

This is a misstatement because it identifies only a small part of the complaint. Defendants have unlawfully attached, or have taken, almost $100,000 of Plaintiff's assets; an amount even greater than cited by the Accountant's Declaration which only dealt with the illegal "tax" seizures. Only a few percent of the money has been accounted for; very little of it was involved in the transfers conducted without one iota of authority or jurisdiction. And only now in their Opposition Brief, do Respondents finally admit that Petitioner has paid his taxes even though no credit was given for the tax payments (Exhibits 7 through 13, 57, 58; Addenda A1-A11).

The Defendants Took Much More Than Two Checks

13. Respondents claim *"petitioner filed this action against the Internal Revenue Service and its Commissioner and a District Director to challenge the transfer of his tax overpayment to the California authorities."*

This is an understatement. Furthermore, it is a smoke-screen and red herring for the simple fact that the Defendants have failed to give credit for taxes timely paid. No credit has been given to this date for the payments or overpayments. Petitioner overpaid all taxes in 1989, 1990, 1991, and 1992. As discussed in the unrebutted Declaration of the Accountant, **"To date, Dr. Swartz has received no credit for payments in 1990 amounting to at least $34,000."**

Defendant's own Area "D" Division (Addenda A5, A6) confirmed Petitioner's assertions, and Officers of the Court and a Congressman (Exhibits 2,1) wrote of the unfair treatment and illegalities being committed by the Defendants against the Petitoner. In an early effort to resolve this matter, Plaintiff was told there would be no access to either an IRS supervisor or one of the purported ombudsman. Thus, Petitioner

gave evidence of errors and fraud to the Respondents who did nothing but attack the Petitioner and coverup the matter. Respondents egregiously produced false federal documents [Exhibits 1,2,5,6,41,42] because of their unlimited powers to inflict fraudulent liens and levies, removal of child support account funds, seizure of IRAs and medical insurance money - even when Petitioner paid on time, with the correct forms. Instead Plaintiffs bank accounts and child support accounts suddenly registered zero. These improper seizures occurred without the requisite prior notice, without reason, and without full accounting by Defendant despite explicit law to the contrary.

The Defendants Acted Recklessly And Intentionally

14. The Respondents claim, *"..the agency's compliance with the requirements of Section 6402(c)- by remitting petitioner's overpayments to California upon the State's certification that taxpayer had past-due child support obligations was manifestly not in "reckless" or "intentional" disregard of the internal revenue laws."*

What could be more reckless than recollecting for taxes already paid? What could be more reckless than ignoring Orders from two state Courts? None of the Court orders, stipulations, faxes, or letters, ever deterred the Defendants from their well known pattern of malicious prosecution, persecution, usurpation of civil rights. Defendants elected to repeat their unlawful activities anyway [471 U.S. 462, 472; Sawtelle, 70 F.3d at 1387]. What could be more reckless than taking clearly labeled child support accounts which are putatively protected based on laws that Congress passed to prevent just such reprehensible actions? What could be more reckless than ignoring errors or fraud? Defendant purportedly has a code where they are supposed to investigate problems and fraud. Where were they for Petitioner?

Federal Law Is The Controlling Authority

15. The Respondents claim, *"Section 7433(a) was amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105206, § 3102(a)(1)(A), 112 Stat.730. As amended, Section 7433(a) allows a wrongful collection action against the United States if IRS employees disregard any provision of the internal revenue laws "recklessly or intentionally, or by reason of negligence ... The*

amendment applies to actions of IRS employees occurring after July 22, 1998, and is not applicable to the instant lawsuit."

Defendants purport that they are not responsible because full truthfulness was not required before July 22, 1998. In fact, Defendants have intentionally disregarded their own records, internal revenue laws, and Court orders. Although Plaintiff has paid all tax (Exhibits 7, 8, 9, 10, 11- 12, 13), Defendants have fraudulently, recklessly, and with malice helped to destroy the credit and livelihood of the Plaintiff including by illegal liens and seizures. Thus, Defendants have defied Federal law, the US Constitution, and due process, and have inflicted pain and suffering, by use of a combination of fraud, and usurpation of civil rights. In this case Defendants have violated statute (Exhibits 3,5,6,14-21,28,42-51; Appendix pages 161, 207-212, 296-333), their own regulations (Exhibits 6,14-21,28,42,49-51,56), other statutes (Exhibits 19,20,29-32), and have commit civil rights violations (1-4,6,14-17,19-21, 28,34,35-37,43-51,56), have attacked US citizens (Exhibits 6,19,20,27,42-48; Appendix pages 309-335), and have violated UN law in this case (Exhibits 34 through 37). Plaintiff is entitled to sue and is entitled to damages (Exhibit 20, Griswold, v. USA). Under Internal Revenue Code Section 7430, Section 292(a), Plaintiff can prevail and establish that the position of the IRS was unreasonable especially given the cashed checks with no credit given, false liens, and harassment (Exhibit 23; Miklautsch v. Comm, No. A89-291 Civil, 11/6/90].

Petitioner Satisfied The Anti-Injunction Act

16. The Respondents claim, *"The court noted that petitioner's request for injunctive relief against these tax collection actions was, in any event, barred by the Anti-Injunction Act, 26 U.S.C. 7421(a) (Supp. III 1997)."*

The Supreme Court has recognized that a suitable alternative remedy is to pay the tax, and sue for a refund [Enochs v. Williams Packing & Navigation Co., Inc., 370 U.S. 1 (1962)]. The Supreme Court held that a taxpayer must pay the full amount of the tax which has been assessed before he or she can initiate an action for refund under Section 1346(a)(1) [Flora v. U.S., 362 U.S. 145 (1960)]. Must Petitioner pay the

tax over and over and over? By civilized custom, people paying by check are given credit, but in this case, Respondents have only admitted a decade later than Petitioner paid. The cashed checks exceeding the amount of the requisite tax for each and every year, and the admission by the Respondents satisfy both Enoch and the Nut Margarine conditions. In addition, US Statute Sec. 7422 explicitly specifies that Plaintiff is entitled to said refund and can sue for the return of said refund (Exhibit 14). The government cannot prevail on the merits.

Ignoring Court Orders From Two States Is An Obvious Civil Rights Violation

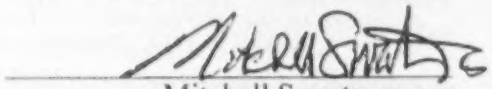
17. The Respondents claim, *"Petitioner based his claim for damages on his allegation that the IRS had violated his civil rights by intercepting his tax refunds and had denied him due process by transferring the overpayments to California without affording him notice and a hearing. The assertion that the TRIP program deprives federal taxpayers of due process of law was fully addressed, and correctly rejected, in Anderson v. White, 888 F.2d at 991-995".*

However, these are understatements and irrelevant for several reasons. Plaintiff had a prior court orders, sole jurisdiction in Massachusetts, and Agreements so the civil rights violations described in the above-entitled action would not occur, and such was not the case in Anderson v. White, 888 F.2d at 991-995. There have been civil rights violations because Defendants were reckless, especially after being informed by an Assistant DA, by a US Congressman, and after being shown orders from two states. The civil rights violations were wrought because Defendants have ignored true controlling -- Court orders from two states.

Third, there have been civil rights violations because the IRS did not merely intercept tax refunds and give them to a third party in violation of Court orders from two states and Federal law; rather, the IRS also seized assets for money already paid including Congressionally-ordered lien-proof child support accounts. Fourth, there have been civil rights violations because Defendants' reckless actions encouraged alienation of affection between Petitioner and his son (Griswold v. Connecticut, 85 S.Ct. 1678) and other civil rights

usurpation, and have frustrated and hindered efforts to enforce Court orders and judgments (Exhibits 8 and 9 of the original Complaint). Defendants have violated Plaintiffs rights to the 14th Amendment's "equal protection" clause [US. Code Annotated, Frontiero v. Richardson, 93 S.Ct. 1736, 411 U.S. 677; Weiss v. Weiss, 436 N.Y.S. 2d. 862, 52 N.Y. 2d. 170 (1981)]. Furthermore, despite the Sixth Amendment, Plaintiff was denied his right to confront opposing witnesses and the right to compulsory process for obtaining favorable witnesses including the right to an opportunity to be heard before losing any liberty or property rights. Defendants have clearly deprived Plaintiff of Rights Under Color of Law [18 U.S.C. § 242], and pursuant Gamez v. Toledo, 100 S. Ct. 1920, Plaintiff asserted that this is a federal civil rights suit.

Respectfully submitted,



Mitchell Swartz, *pro se*
P.O. Box 81135
Wellesley Hills, MA 02481-0001

Certificate Of Service

I certify that three copies of the above Petition have been mailed first class prepaid to the Defendants' attorney of record, Attorney Seth P. Waxman, Office of the Solicitor General, US Dept of Justice, #10001, Washington, D.C. 20530, this May 28, 1999.

Certificate Of Mailing

To Whom it Does Concern:

I hereby certify that this Petition, forty copies, has been deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

"Office of the Clerk SUPREME COURT OF THE UNITED STATES 1 First Street, N.E. Washington, DC 20543" on May 28, 1999